TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 369.

JAMES G. TINSLEY, APPELLANT,

vs.

MORGAN TREAT, UNITED STATES MARSHAL IN AND FOR THE EASTERN DISTRICT OF VIRGINIA, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

FILED AUGUST 14, 1906.

(20,334.)

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a In the Supreme Court of the United States.

In re Petition of J. G. TINSLEY, for Writs of *Habeas Corpus* and Certiorari.

J. G. TINSLEY, Appellant,

vs.

MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia; Jos. P. BRADY, Deputy Clerk of the District Court of the United States for the Eastern District of Virginia, and Hon. EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Judge L. L. Lewis, United States District Attorney for the eastern District of Virginia, Jos. P. Brady, Clerk of the United States Circuit Court for the eastern district of Virginia, Morgan Treat, United States Marshal in and for the eastern District of Virginia; Hon. Edmund Waddill, Jr., United States District Judge, for the Eastern District of Virginia, and Jos. P. Brady, Deputy Clerk of the United States District Court for the eastern District of Virginia.

You are cited and admonished to be and appear at the Supreme Court of the United States at the City of Washington, within thirty days from the date of this writ, pursuant to an appeal duly allowed by the Circuit Court for the Fourth Judicial Circuit, Eastern District of Virginia and filed in the Clerk's Office of said Court on the 14th day of July, 1906, in the cause entitled, in the matter of the b petition of J. G. Tinsley for writs of *habeas corpus* and certiorari, J. G. Tinsley, appellant, *versus*, Morgan Treat, United States Marshall in and for the eastern District of Virginia, Jos. P. Brady, Deputy Clerk of the District Court of the United States in and for said eastern District of Virginia, and Hon. Edmund Waddill, Jr., United States District Judge, in and for said Eastern District of Virginia, Appellees, to show cause, if any, why the final order of said Circuit Court, rendered against the appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Hon. Nathan Goff, Judge of the United States Circuit Court, this 14th day of July, A. D., 1906.

NATHAN GOFF,
Judge of the Circuit Court of the United States.

c Legal service of the within citation his hereby acknowledged this 21st Jufly, 1906.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

Executed this 23rd day of July, 1906, by delivering in person in the City of Richmond, Va., a true copy of the within citation to the following named persons viz: L. L. Lewis United States District Attorney for the Eastern District of Virginia, Joseph P. Brady Clerk of the United States Circuit Court for the Eastern District of Virginia, Joseph P. Brady Deputy Clerk of the United States District Court for the Eastern District of Virginia.

MORGAN TREAT,
United States Marshal.

Marshal's Fees for service $6.00.

Further executed this 23rd day of July 1906, by delivering in person in the City of Richmond Va. to Morgan Treat United States Marshal for the Eastern District of Virginia, a true copy of this citation.

MORGAN TREAT,
United States Marshal,
By M. J. ENRIGHT,
Office Deputy Marshal.

Marshal's Fees for service, $2.00.

d [Endorsed:] No. —. Circuit Court of the U. S., Eastern District of Virginia. In the Matter of the Petition of J. G. Tinsley for Writs of *Habeas Corpus* and Certiorari. J. G. Tinsley, Appellant, *vs.* Morgan Treat, United States Marshal, &c., *et als.*, Appellees. Citation. Filed this 14th day of July, 1906. Joseph P. Brady, Clerk.

1 *Transcript of Record.*

THE UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

At a Circuit Court of the United States for the Eastern District of Virginia, begun and held at the Court Rooms in the Custom House, in the City of Richmond, Virginia, on the first Monday in April, being the second day of the same month, in the year of our Lord one thousand, nine hundred and six.

Present: The Honorable NATHAN GOFF, Judge of the Circuit Court of the United States for the Eastern District of Virginia.

Among other were the following proceedings, to-wit:

In the Matter of the Petition of JAMES G. TINSLEY for Writs of *Habeas Corpus* and Certiorari.

JAMES G. TINSLEY, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

2 *Petition for Writs of Habeas Corpus and Certiorari.*

Filed July 11th, 1906.

In the Circuit Court of the United States for the Eastern District of Virginia.

In the Matter of the Petition of JAMES G. TINSLEY for Writs of *Habeas Corpus* and Certiorari.

JAMES G. TINSLEY, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

To the Honorable the Judges of the Circuit Court of the United States for the Eastern District of Virginia:

The Petition and Complaint of James G. Tinsley respectfully shows to the Court:

1. That your Petitioner is a citizen of the United States, and is a citizen and resident of the Eastern District of Virginia, and is unlawfully imprisoned and restrained of his liberty by Morgan Treat, United States Marshal for the Eastern District of Virginia, in the City of Richmond, and County of Henrico, in said District. That your petitioner is held by said United States Marshal under color and claim of authority of the United States, by virtue of a warrant for removal claimed to have been issued under Section 1014 of
3 the Revised Statutes of the United States, dated July 1906, signed by the Honorable Edmund Waddill, Jr., Judge of the District Court of the United States for the Eastern District of Virginia, and has been committed and is detained only under and by virtue of said warrant, and not by virtue of any judgment, decree or final order of any Court.

2. On the 10th day of July 1906, at the said City of Richmond, in said District, complaint in writing signed and sworn to by Morgan Treat, United States Marshal in and for said District, a copy of which is hereto attached, marked "Exhibit A," and made part hereof, was presented to the Honorable Edmund Waddill, Jr., Judge of the

District Court of the United States for the said District, in and by which it was averred that he the said Morgan Treat, United States Marshal, had good cause to believe and did believe that your petitioner, of Richmond, Va., has been indicated by the Grand Jury of the Circuit Court of the United States in and for the Middle District of Tennessee, for that your petitioner on the 8th day of July 1903 and during the period of time from that date until and on the first day of September 1905, and being during said period President of the Marietta Fertilizer Company, a corporation existing under the laws of the State of Georgia, and Vice President of the Tennessee Chemical Company, a corporation existing under the laws of the State of Tennessee, did, in said Middle District of Tennessee, unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of Section 1 of the Act of Congress approved July 2nd, 1890, entitled "An Act to protect Trade and Commerce against unlawful restraints and monopolies," and that on the 8th day of July,
4 1903, at and within the County of Davidson in the said Middle District of Tennessee, in violation of the provisions of Section 5440 of the Revised Statutes of the United States, your petitioner did unlawfully conspire with divers other persons and corporations to commit an offense against the United States, to wit: The offense of engaging in a combination in restraint of trade and commerce among the several States of the United States, all as more fully set out in an indictment filed in the said Circuit Court of the United States in and for the Middle District of Tennessee on May 25th, 1906, a certified copy of which indictment said complaint states was thereto attached and made a part of said complaint, and in and by which said complaint, said complainant did, therefore, charge that your petitioner did commit the said offense against the United States in the manner and form as set forth in said indictment, and did furthermore aver in said complaint upon information and belief, that in pursuance of an order of the said Circuit Court of the United States for the Middle District of Tennessee, a Bench Warrant had been issued from said Court for the arrest of your petitioner and delivered to the Marshal of the said Court, who, after due search, had returned said warrant "Not found" in said Middle District of Tennessee and that your petitioner is now believed to be within the Eastern District of Virginia, of which District he is a resident. And said complainant, said Morgan Treat, United States Marshal, in and by said complaint did therefore pray that your petitioner might be arrested, imprisoned, and removed or bailed, as the case might be, for trial before said Circuit Court of the United States for the Middle District of Tennessee, and further dealt with according to law; all of which will appear from the said complaint, a copy of which is hereto attached as aforesaid, reference thereto being hereby made for greater certainty. And that thereupon, to-wit, on
5 the said 10th day of July 1906, a warrant for his arrest was issued by the Honorable Edmund Waddill, Jr., Judge as aforesaid, upon the aforesaid complaint, which came to the hands of the said Morgan Treat, Marshal as aforesaid, and he, in obedience

thereto, arrested your petitioner and brought him before the said the Honorable Edmund Waddill, Jr., Judge as aforesaid, and made return of said Warrant, and endorsed thereon, the following, and a copy of said Warrant with the endorsement thereon is hereto attached marked "Exhibit B" and made a part hereof.

3. That thereupon then and there, the United States Attorney in and for the said Eastern District of Virginia, for and on behalf of the United States, did offer and introduce in evidence to and before the said Judge, in support of the averments of the said complaint of said Morgan Treat, United States Marshal, a certified copy of the said Indictment mentioned and referred to in the said complaint. A certified copy of said indictment so offered and introduced in evidence is hereto attached, marked "Exhibit C," and made a part hereof, and the identity of your petitioner with and as the James G. Tinsley mentioned and referred to in the said Indictment as one of the defendants therein, having been then and there admitted by your petitioner, the Government, the United States of America, introduced or offered no other or further proof or evidence in support of the said complaint or of the averments therein, but rested its case upon the said hearing of the said complaint before the said Judge.

4. That thereupon, then and there, you petitioner, by his Counsel, proceeded to offer and offered proof and evidence to show that your petitioner did not within the said Middle District of Tennessee, on the 8th day of July, 1903, or during the period between
6 the 8th day of July 1903, and the 1st day of September 1905, or at any other time, engage in the said alleged conspiracies in the said indictment mentioned, or any or either of them, or at any time or at any place, join in or assent to the said alleged conspiracies engaged in or entered upon in said Middle District of Tennessee, or any or either of them, or at any time or at any place do any act in furtherance of, or to effect the object of said alleged conspiracies engaged in in said Middle District of Tennessee, or any or either of them. Thereupon, then and there, the Counsel for the Government, upon the said hearing, did object to the introduction on the behalf of your petitioner of the said evidence or any evidence or proof tending to contradict or controvert the respective averments, or any or either of them, in the said indictment and in the respective counts thereof, viz, that your petitioner did engage in the said alleged conspiracies in said indictment mentioned and referred to, in the said Middle District of Tennessee, in manner and form as in the said indictment in that behalf averred, or to contradict or controvert or disprove any of the averments in the said indictment contained,—on the ground, then and there stated, that upon the said hearing of said complaint, the said certified copy of the said indictment was conclusive evidence of every fact therein averred to sustain and prove upon the said hearing the said complaint of the said Morgan Treat, United States Marshal, and the averments thereof, and the probable cause of the commission by your petitioner of the said supposed offenses in the said indictment mentioned and of any and every of them in the manner and form as in the said indictment averred, and in that behalf, your petitioner

then and there took the Witness Stand and was sworn as a witness in his own behalf.

7 5. That thereupon, then and there, your petitioner by his counsel stated to the Judge that he would prove, and then and there offered to prove, by your petitioner as a witness the following facts, which facts are true, that is to say; that the Circuit Court for the Middle District of Tennessee had no jurisdiction over the person of said defendant touching the offenses charged in said Indictment in that defendant and said other witnesses would if permitted testify that defendant is and has been for many years a resident and citizen of the City of Richmond State of Virginia, and that defendant never at any time or at any place in the State of Tennessee at the times charged in the Indictment, did or perform or was party to or engaged in any act or thing in the said Indictment charged as having been done and performed in any way whatsoever by this defendant in the said State of Tennessee; nor has defendant done, or performed, or been *ne*gaged in, or a party to the same or any of them in any other place or places at any other time or times whatsoever.

6. That the United States Attorney, on behalf of the Government, then and there objected to the introduction or reception by the said Judge of the said evidence so offered on behalf of your petitioner, and to each and every part thereof, on the ground herein before stated, which objection was then and there sustained by the Court on the ground that the said certified copy of the said indictment so introduced on behalf of the Government, the identity of your petitioner as aforesaid being admitted by your petitioner as aforesaid, was conclusive evidence of the existence of every fact stated in the indictment, including the averments that the conspiracies alleged in the said indictment were engaged in in the Middle District of Tennessee, and that therefore said evidence or any evidence

8 offered by and on behalf of your petitioner to controvert, contradict or disprove the averments of the said indictment in that behalf, or any or either of them, was incompetent and inadmissable; and the said Judge, then and there, on the grounds aforesaid, excluded and refused to receive said evidence so offered on behalf of your petitioner, or any part thereof, to which ruling of the Judge, your petitioner then and there, by his Counsel, duly excepted.

7. That thereupon the said Judge, upon the complaint and upon the evidence so introduced for and on behalf of the Government as aforesaid, made and signed a certain order reciting his said rulings as aforesaid and ordering as in said order appears, which said order is as follows:

THE UNITED STATES OF AMERICA, *Eastern District of Virginia:*

THE UNITED STATES
vs.
J. G. TINSLEY.

This is an application under the provisions of Section 1014 of the United States Revised Statutes for a warrant for the removal of J.

G. Tinsley to the Middle District of Tennessee and comes before me as follows:

The District Attorney for this District, together with Mr. E. T. Sanford, Counsel for the United States, presented to me a verified complaint of Morgan Treat, United States Marshal for this District, with the certified copy of an Indictment filed on May 25th, 1906, in the Circuit Court of the United States for the Middle District of Tennessee in the case of the United States *vs.* Virginia-Carolina Chemical Company and other defendants, including among such defendants the said J. G. Tinsley.

Said complaint and copy of said indictment are made parts
9 of this order. Upon the exhibition of this indictment and affidavit and the *ex parte* motion of the counsel for the United States I made an order for the arrest of said J. G. Tinsley and his production before me.

This order was duly executed by the said Marshal, who arrested the said J. G. Tinsley and brought him before me in Richmond on this 10th day of July, 1906, as shown by his return. When the accused was so brought before me it was moved by the counsel for the United States that inasmuch as the indictment charged offenses against the United States triable in the Circuit Court of said United States for the Middle District of Tennessee, and the identity of the defendant was admitted, that an order be forthwith made for the commitment of said J. G. Tinsley for trial before said Circuit Court.

This motion was made upon the certified copy of the Indictment without any further testimony, the identity of the party arrested and brought before me with the J. G. Tinsley mentioned in the Indictment being admitted.

And thereupon the defendant, J. G. Tinsley, offered himself as witness in his own behalf, and being about to be sworn, the United States, by its counsel, thereupon objected to the witness being sworn or to any testimony being given in rebuttal of the Indictment in these proceedings, on the ground that the identity of the defendant being admitted, inasmuch as the Indictment on its face charges offenses against the United States committed and triable in the jurisdiction in which the defendant stands indicted, no evidence is admissable here to impeach the indictment, and the order of commitment should be made without other proof.

The defendant's counsel thereupon offered to prove by the defendant and other witnesses then and there present, that the
10 Circuit Court for the Middle District of Tennessee had no jurisdiction over the person of said defendant touching the offense charged in said indictment, in that defendant and said other witnesses would, if permitted, testify that defendant is, and has been for many years, a resident and citizen of the City of Richmond, State of Virginia, and that defendant never at any time, or at any place in the State of Tennessee, at the times charged in the Indictment, did, or performed, or was party to, or engaged in any act or thing in the said Indictment charged as having been done and performed in any way whatsoever by this defendant in the said State

of Tennessee; Nor has defendant done, or performed, or been engaged in, or a party to the same, or any of them in any other place or places at any other time or times whatsoever.

Thereupon counsel for the Government renewed its objections as aforesaid.

After hearing counsel on both sides, the Court announced its conclusions as follows:—

"The conclusion reached by the Court is that in a proceeding for the arrest and the removal of persons charged with a violation of the laws of the United States pursuant to section 1014 of the Revised Statutes of the United States, before a United States District Judge, sitting in the State of Virginia, in which State there no longer exists the right of a preliminary examination upon a crime charged prior to the trial upon the merits, when said Judge is called upon to act as well in the matter of the apprehension of such persons, as in their removal to the jurisdiction in which they have been indicted, that upon the government's presentation of a sufficient indictment regularly found by a grand jury in a court of the United States, properly charging the commission of an offense within the district
11 in which such indictment is found, coupled with proof of the identity of the person indicted, it is its duty to properly bail such person for appearance before the court in which he is indicted, or cause him to be removed thereto."

Therefore, it was ordered that the testimony offered is inadmissable, and will not be received, and I therefore made the following order:

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The within named James G. Tinsley having been brought before me, and identified; and it appearing by a duly authenticated copy of an indictment that he stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," for violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States, it is ordered that the said James G. Tinsley give bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial before said Court under the said indictment; or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee, to be there dealt with according to law.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

Richmond, Va., July 11th, 1906.

And after said order had been made and the defendant
12 declined to give bond, the Counsel for the United States moved that the warrant do issue directed to the Marshal of

this District for the imprisonment and removal of the said J. G. Tinsley to the said Middle District of Tennessee and his delivery to the custody of the United States Marshal of the district.

On such motion counsel for the said J. G. Tinsley objected and again offered the said J. G. Tinsley as a witness, together with the other witnesses here-before referred to, to establish the same matters and facts as hereinbefore stated with regard to the objection to the order for the commitment of the said J. G. Tinsley, which testimony was again offered and was again objected to by the counsel for the United States on the same grounds as above set forth, and on the further ground that these matters could not be inquired of in this stage of the proceedings, and was again excluded by the court, to all of which counsel for the said J. G. Tinsley duly excepted and had the exceptions noted and entered.

I therefore issued a warrant directed to the Marshal as follows:

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

Richmond, Va., July 11, 1906.

Warrant of Imprisonment and Removal.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The President of the United States to the United States Marshal of the Eastern District of Virginia, Greeting:

Whereas it has been made to appear that James G. Tins-
13 ley stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled: "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," for violation of section one of the act of Congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States; and whereas the said James G. Tinsley having been brought before me, and identified; and a certified copy of said indictment furnishing probable cause to believe him to be guilty as therein charged, and whereas it was thereupon ordered by me that said defendant give bail in the sum of five thousand dollars with one or more sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial under said indictment, or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee to be there dealt with according to law; and the said defendant having failed and refused to give bail as required, therefore:

You are hereby commanded in the name and by the authority of the said United States to imprison the said James G. Tinsley in accordance with law, and that with all convenient speed you remove him hence to the said Middle District of Tennessee and there sur-

render him to the Marshal of that District, there to be dealt with according to law.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

Richmond, Va., July 11, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

Richmond, Va., July 11th, 1906.

A Copy.—Teste:

G. E. BOWDEN, *Clerk,*
By JOSEPH P. BRADY, *Dep'y Clerk.*

14 8. Your petitioner further says that he is advised, and he charges and submits, that under and by Virtue of Clause 3, of Section 2, of Article 3, of the Constitution of the United States, and of the Sixth Amendment to the said Constitution, your petitioner is entitled to be tried and can only be indicted and tried for any alleged offenses against the Laws of the United States, in the State and District in which the offense, which the indictment charges, was committed; That the said supposed offenses in the said indictment mentioned and charged, were not, nor was any or either of them, committed in the said Middle District of Tennessee; that none of the alleged acts, transactions, matters or things which are in the said indictment mentioned or referred to as being and constituting the supposed engaging by this defendant in the said alleged conspiracies in the said indictment referred to, or any or either of them, were done or held or took place within the said Middle District of Tennessee, and no alleged act, transaction, matter or thing, in the said indictment mentioned or referred to as being the doing by this defendant of an act to effect the object of said conspiracy was done or held or took place within the Middle District of Tennessee; and that your petitioner did not, on the 3rd day of December 1903, or during the period of time from the 8th day of July 1903 until and on the 1st day of September 1905, or at any other time, at or within the County of Davidson in the said Middle District of Tennessee, or elsewhere in said Middle District of Tennessee, as Vice President of the said Tennessee Chemical Company, or otherwise, unlawfully, or otherwise, sign his name with his official designation, to-wit: James G. Tinsley, V-P, or otherwise, to the said alleged check in the said indictment in that behalf mentioned; and that your petitioner did not at any time at or within the Middle
15 District of Tennessee, sign his name to any check, or do any act in pursuance of the said alleged conspiracies in the said indictment mentioned, or any or either of them, in furtherance of the said alleged conspiracies in said indictment mentioned, or any or either of them, or to effect the object of the same, or as an act on the part of your petitioner of engaging in the same.

9. That thereupon, the United States Attorney moved the com-

mittment of your petitioner to the Marshal of the said District for removal to the Middle District of Tennessee for trial upon the Indictment in the United States Circuit Court for said District, and the said Attorney for the United States thereupon made a motion before the Honorable Edmund Waddill, Jr., Judge, for the issuance of a Warrant for the removal of your petitioner to the Middle District of Tennessee for trial as aforesaid, in the United States Circuit Court for said District, upon the said Indictment, and the said motion was allowed, and said Warrant was in pursuance thereof issued by said Judge, and a copy thereof is embraced in the order of the said Judge hereinbefore recited as a part hereof. That thereupon the said Marshal of the Eastern District of Virginia, to whom the said Warrant was directed, took your petitioner into custody upon the said warrant and now holds your petitioner thereunder and threatens to take and remove your petitioner to the said Middle District of Tennessee, as directed by the said warrant and will do so, unless Your Honor shall issue the writ of *Habeas Corpus* herein prayed for. Your petitioner further says that in case your petitioner is removed under the said Warrant to the said Middle District of Tennessee for trial upon said Indictment and is there held for trial and tried upon the said Indictment, your petitioner will not
16 be tried within the District in which the said alleged offenses charged in the said Indictment were committed, as required by the Sixth Amendment to the Constitution of the United States, and by Clause 3, of Section 2, of Article 3 of said Constitution, and will be tried in violation of his rights under said provisions of the said Constitution. Your petitioner further says that he is advised, and he charges, that the said indictment does not charge the commission by your petitioner of any offense against the Laws of the United States, and that same is in that behalf insufficient and void.

10. That the imprisonment and detention of your petitioner is without authority of Law and the said proceedings before said United States District Judge are illegal and the said Warrant of removal was illegally issued and in violation of Article 3, Section 2, of the Federal Constitution, and of the Sixth Amendment to the said Constitution; and that then and thereby the said rulings of the said District Judge, in the exclusion of the said evidence and in holding that the said certified copy of the Indictment was conclusive evidence as aforesaid, and in refusing to permit your petitioner to introduce any evidence on his behalf, as aforesaid, your petitioner was deprived of rights secured to him by the said provisions of the said Constitution and by Section 1014 of the Revised Statutes, and was and is by said Morgan Treat United States Marshal deprived of his liberty without due process of Law.

Wherefore, your petitioner prays that a writ of *Habeas Corpus* be issued, directed to the said United States Marshal of the Eastern District of Virginia, who has your petitioner in custody, demanding him to bring the body of your petitioner before this Court forthwith; and further that a writ of Certiorari be directed to the said
17 Honorable Edmund Waddill, Jr., Judge as aforesaid, commanding that he return all proceedings against this petitioner

to this court forthwith, for such action as may be proper in the premises.

JAMES G. TINSLEY.

WILLIAM A. MONCURE,
Attorney for Petitioner.
JOHN J. VERTRESS,
HENRY A. M. SMITH,
JAMES C. BRADFORD, *Counsel.*

UNITED STATES OF AMERICA,
Eastern District of Virginia, County of Henrico, ss:

James G. Tinsley, being duly sworn, deposes and says that he has read the foregoing petition, and knows the contents thereof, and that the same is in all respects true.

Sworn and subscribed to before me this 11th day of July, 1906.

JOSEPH P. BRADY,
Clerk U. S. Circuit Court.

EXHIBIT "A."

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

On this 10th day of July, A. D., 1906, at the City of Richmond, in the said District, before the Hon. Edmund Waddill, Jr., Judge of the District Court of the United States of America for the said District, comes Morgan Treat, United States Marshal in and for the said District, and upon his oath complains and says: that he has
18 good cause to believe and does firmly believe that James G. Tinsley, of Richmond, Virginia, stands indicted by the Grand Jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said James G. Tinsley on the eighth day of July in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, being during said period President of the Marietta Fertilizer Company, a corporation existing under and by the laws of the State of Georgia, and Vice-President of the Tennessee Chemical Company, a corporation existing under and authorized by the laws of the State of Tennessee, did in the said Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said James G. Tinsley did unlawfully conspire with divers other persons and corporations to commit an offense against the United States, to-wit, the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States, all as more fully set out in an in-

dictment filed in the said Circuit Court of the United States in and for the Middle District of Tennessee on May 25, 1906, in cause No. 963, entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," a certified copy of which indictment is hereto attached and made a part of this complainant; and complainant therefore charges that the said James G. Tinsley did commit the said
19 offenses against the United States in manner and form as set forth in said indictment.

Complainant furthermore avers upon information and belief that in pursuance of an order of said Circuit Court of the United States for the Middle District of Tennessee a bench warrant has been issued from said Court for the arrest of said James G. Tinsley and delivered to the Marshal of said Court, who after due search has returned said warrant "not found" in said Middle District of Tennessee; and that said James G. Tinsley is now believed to be within the Eastern District of Virginia, of which District he is a resident.

Wherefore this complainant prays that the said James G. Tinsley may be arrested and imprisoned and removed or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee, and further dealt with according to law.

MORGAN TREAT, *Marshal.*

Subscribed and sworn to before me by the above named Morgan Treat the day and year first above written.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

EXHIBIT B.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

To the Marshal of the Eastern District of Virginia, Greeting:

Whereas complaint in writing, on oath, has been made to me charging that James G. Tinsley of Richmond, Va., stands
20 indicted by the Grand Jury of the Circuit Court of the said United States in and for the Middle District of Tennessee for — the said James G. Tinsley on the eighth day of July, 1903, and during the period of time from that date until and on the first day of September, 1905, did in the Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of Section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on the said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee in violation of the provisions of Section 5440 of the Revised Statutes of the United States the said James G. Tinsley did unlawfully conspire with divers other persons and corporations to commit an offense against the United States, to-wit,

the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States, and application has been made to me that the said James G. Tinsley may be arrested and imprisoned and removed, or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee;

Now therefore, you are hereby commanded to arrest the said James G. Tinsley if he be found within your said District, and bring him forthwith before me at my Chambers in Richmond, in order that he may be dealt with according to law.

EDMUND WADDILL, JR.,
U. S. District Judge.

Richmond, July 10, 1906.

Pursuant to the within writ, I have taken the defendant James G. Tinsley into custody and now have him before Hon. Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia.

MORGAN TREAT,
United States Marshal.

July 10, 1906.

21 UNITED STATES OF AMERICA,
Eastern District of Virginia, set:

The within named James G. Tinsley having been brought before me, and identified; and it appearing by a duly authenticated copy of an indictment that he stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al,*" for violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States, it is ordered that the said James G. Tinsley give bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial before said Court under the said indictment; or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee, to be there dealt with according to law.

Richmond, Va., July 11", 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

22 EXHIBIT C.

In the Circuit Court of the United States of America for the Middle District of Tennessee, of the April Term, in the Year of Our Lord Nineteen Hundred and Six.

MIDDLE DISTRICT OF TENNESSEE, *Set:*

The grand jurors for the United States of America, inquiring for the Middle District of Tennessee, upon their oath present, that before and on the eighth day of July, in the year of our Lord nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year of our Lord nineteen hundred and five, the following named corporations, respectively organized and existing under and authorized by the laws of the several States and of the foreign country here named in connection with them, and hereafter in this indictment called corporation defendants, to wit, the Virginia-Carolina Chemical Company, of New Jersey, Armour and Company, of Illinois, the Acme Manufacturing Company, of North Carolina, the Alabama Chemical Company, of New Jersey, the Anderson Phosphate & Oil Company, of South Carolina, the Ashepoo Fertilizer Company, of South Carolina, the Blackshear Manufacturing Company, of Georgia, the Etiwan Fertilizer Company, of South Carolina, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, The Furman Farm Improvement Company, of Georgia, the Goulding Fertilizer Company, Limited, of Great Britain and Ireland, The Goulding Fertilizer Company, of Florida, the Gulfport Cotton Oil, Fertilizer & Manufacturing Company, of Georgia, the Home Mixture Guano Company, of Georgia, the Jackson Fertilizer Company, of Mississippi, the Marietta Fertilizer Company, of Georgia, the Meridian Fertilizer Factory, of Mississippi, the National Fertilizer Company, of Tennessee, the New Orleans Acid and Fertilizer Company, of New Jersey, the Old Dominion Guano Company, of Georgia, the Planters Chemical Company, of Alabama, the
23 Read Phosphate Company, of West Virginia, the F. S. Royster Guano Company, of Virginia, the Savannah Guano Company, of Georgia, the Southern States Phosphate and Fertilizer Company, of Georgia, the Standard Chemical & Oil Company, of Alabama, the Standard Guano and Chemical Manufacturing Company, of Louisiana, Swift & Company, of Illinois, the Tennessee Chemical Company, of Tennessee, and the Tennessee Valley Fertilizer Company, of Alabama, and certain firms, to wit, the firm of A. D. Adair and McCarty Brothers and the firm of Wilcox, Ives & Company, did carry on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereafter in this indictment called the States of the conspiracy, as wholesale dealers in complete and alkaline fertilizers and in acid phosphates, nitrates, and potash salts suitable for fertilizers, which then were useful and valuable

articles of merchandise, indispensable for use on the soil of the said States of the conspiracy in order that the staple crops of those States might be raised therefrom; that the following named persons, hereafter in this indictment called individual defendants, to wit, Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, of the said Virginia-Carolina Chemical Company, and J. Rice Smith, agent and manager of the said Virginia-Carolina Chemical Company, and president of the Georgia Chemical Works hereinafter mentioned, Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, Fred G. Brown, president and treasurer of the said Anderson Phosphate & Oil Company, Frank Burbidge, president, and William J. McCormack, treasurer, of the said Etiwan Fertilizer Company, George Braden, president of the said Federal Chemical Company, of Delaware, and also of the said Federal Chemical Company, of Kentucky, Augustus D. Adair and James D. McCarty, officers and agents of the said Furman Farm Improvement Company and members of the said firm of A. D. Adair and McCarty Brothers, William DeC. Kessler, secretary and treasurer of the said Goulding Fertilizer Company, Limited, James G. Tinsley, president of the said Marietta Fertilizer Company and vice-president of the said Tennessee Chemical Company, William D. Rhea, general manager of the said National Fertilizer Company, William L. Peel, president of the said Old Dominion Guano Company, Abram C. Read, vice-president and general manager, and Isaac Mayo Read, agent, of the said Read Phosphate Company, Frank S. Royster, president, and Charles F. Bur-
24 roughs, vice-president, of the said F. S. Royster Guano Company, A. J. Ives, whose Christian name is to the said grand jurors unknown, secretary and treasurer of the said Savannah Guano Company and a member of the said firm of Wilcox, Ives & Company, T. Porter Fleming, vice-president of the said Southern States Phosphate and Fertilizer Company, and T. Garland Tinsley, president and treasurer of the said Tennessee Chemical Company, in their said several capacities as officers, managers, agents, and attorneys of the said corporation defendants and members of the said firms, and on behalf of those corporations and firms, during the period of time in this indictment first aforesaid, did carry on the business aforesaid; that in so carrying on the said business the said defendants, that is to say, the said corporation and individual defendants, did sell and deliver large quantities of the said merchandise within the limits of the said States of the conspiracy from the respective places of business of the said corporation defendants and the said firms, located at different points within those States, to retail dealers in and consumers of such merchandise, in such States respectively, and did also ship large quanti-es of the same from their respective places of business, located in the said States of the conspiracy and also in the States of Virginia, Illinois, and Kentucky, into and through other of the said States than those in which their said places of business were located; that in so carrying on the said busi-

ness and shipping the said merchandise from one of the said States into and through another or others thereof, the said defendants, during the period aforesaid, were engaged in trade and commerce among the States of this Union within the meaning of the Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in so carrying on the said business, trade and commerce, the said Virginia-Carolina Chemical Company and the said Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, and J. Rice Smith, agent and manager, of the said Virginia-Carolina Chemical Company, did make use of and operate a portion of their said business, trade and commerce through each of certain other corporations, to wit, the American Fertilizer Company, of Virginia, the Birmingham Fertilizer Company, of Alabama, the Coweta Fertilizer Company, of Georgia, the Georgia Chemical Works, of Georgia, the Navassa Guano Company, of North Carolina, of either the whole or a majority of the capital stock of which said corporations respectively the said Virginia-Carolina Chemical Company was the owner;

25 that in so carrying on the said business, trade and commerce, the said Armour and Company and the said Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, did make use of and operate all of their said business, trade and commerce through a certain other corporation called the Tuscarora Fertilizer Company, of New Jersey, and a certain trade name, to wit, the trade name of Armour Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Furman Farm Improvement Company and the said firm of A. D. Adair and McCarty Brothers did make use of and operate a portion of their said business trade, and commerce under the trade name of Chickamauga Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Federal Chemical Company, of Delaware, and the said Federal Chemical Company of Kentucky, did make use of, and operate a portion of their said business, trade and commerce through, the names of Century Phosphate Company, Fox Chemical Company, Branch Globe Fertilizer Company, Branch and Tennessee Phosphate Company; that in so carrying on the said business, trade and commerce, the said National Fertilizer Company did make use of, and operate a portion of its said business, trade and commerce through, the corporate name of American Guano Company and the trade name of Nashville Guano Company; that in so carrying on the said business, trade and commerce, the said Read Phosphate Company did make use of, and operate a portion of its said business, trade and commerce through the corporate name of Empire Guano Company; that in so carrying on the said business, trade and commerce, the said F. S. Royster Guano Company did make use of, and operate a portion of its said business, trade and commerce through the trade name of Atlantic Chemical Company and the corporate name of Columbia Guano Company; that in so carrying on the said business, trade and

commerce, the said Swift and Company did make use of, and operate the whole of its said business, trade and commerce through, the trade name of Swift Fertilizer Works; and that in so carrying on the said business, trade and commerce, the said Tennessee Chemical Company did make use of, and operate a portion of its said business, trade and commerce through, the trade name of Continental Fertilizer Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that of the total volume of such business, trade and commerce then so being carried on by the said defendants and their competitors, the said defendants together had and controlled the principal part, that is to say, ninety per centum thereof; and
26 that because the said corporation defendants and the said firms were in fact separate and distinct from each other, they should have conducted their interstate trade and commerce strictly in competition with each other, during the said period, and then would have so conducted the same but for the unlawful conspiracy in restraint of the said business, trade and commerce in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, at and within the said Middle District of Tennessee, in violation of the provisions of said section one of the said Act of Congress, unlawfully did knowingly engage in a conspiracy in restraint of the said business, trade and commerce, so then being carried on by them in the manner aforesaid, whereby the said business, trade and commerce was restrained in the several ways and by the several means now here set forth and described, that is to say:

Competition as to the prices at which the said merchandise was sold and delivered by the said corporation defendants and the said firms in the said States of the conspiracy, which before the period of time in this indictment first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was prevented and destroyed by the said defendant from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them styled "current, reasonable market prices," for the said merchandise so sold and delivered by the said corporation defendants and the said firms in those States, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so fixed and caused to be fixed; which said uniform and non-competitive prices were prices greatly in excess of the prices which but for the said unlawful conspiracy would at such times have prevailed for the said merchandise in the said business, trade and commerce, and were prices therefore unreasonable, and were a tax on the people of the said States of the said conspiracy amounting to a large sum of money, to wit, four million dollars, annually during the continuance of the same.

For and on account of such quantity of the said merchandise as was sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts allotted and caused

to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and
27 delivered in excess, was, by the corporation defendants and firms so selling and delivering the same, paid into a common fund, held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, compensated, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as sold and delivered less than the amounts so allotted to them respectively, so it was not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy that each of the said corporation defendants and of the said firms also paid into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment to be the absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm, in disposing of its said allotment in carrying on the said business, trade and commerce, on its part faithfully should exercise every reasonable effort and due business diligence to maintain the prices so fixed and caused to be fixed as aforesaid and pay into the said fund the sum accruing to the same on account of its said excess sales, in which case an equal amount was returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also made uniform and non-competitive as between all of the said corporation defendants and the said firms, in the said business, trade and commerce, among the said States of the conspiracy.

As a convenient intermediary and common agent between the said corporation defendants and the said firms, respectively and as a means of securing their co-operation in carrying out the said unlawful conspiracy, the said defendants made use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company, Limited, was also allowed and required to collect, hold, use and distribute the said fund
28 arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that, in pursuance of the said unlawful conspiracy,

and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of September, in the year nineteen hundred and three, during the period of time aforesaid, at and within the City of New York, in the State of New York, unlawfully did knowingly deposit with the Continental Trust Company, of the said City of New York, the sum of twenty-six thousand dollars, in connection with the purchase of by the said trust company on behalf of the said Virginia-Carolina Chemical Company, and in the name of one Montrose Stuart, a clerk in the office of the said trust company, of twenty-six hundred shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Samuel T. Morgan, on the seventh day of October, in the same year nineteen hundred and three, and during the period of time aforesaid, at and within the said city of New York, in the State of New York, unlawfully did deliver to the said William DeC. Kessler, Vice-President of the said Colonial Development Company, Limited, three checks drawn by the said Virginia-Carolina Chemical Company, one upon the National City Bank, of New York City aforesaid, for eighty thousand dollars, another on the Bank of America, of New York City aforesaid, for fifty thousand dollars, and the other on the National Park Bank, of New York City aforesaid, for thirty-five thousand and four hundred and sixty-eight dollars, aggregating one hundred and sixty-five thousand and four hundred and sixty-eight dollars, as and for a payment, by the said Virginia-Carolina Chemical Company, to the said Colonial Development Company, Limited, of twenty cents a ton on its allotment under the said unlawful conspiracy; he the said Samuel T. Morgan, when and where he so as aforesaid delivered the said checks to the said William DeC. Kessler, well knowing the character and purpose of the same, and well knowing that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as acts on their parts respectively of engaging in the same, the said Samuel T. Morgan,
29 Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, on the seventeenth day of September, in the year nineteen hundred and three, and during the period aforesaid, at the said City of New York, in the said State of New York, unlawfully did meet together to discuss and further the object of the said unlawful conspiracy; they the said Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred G. Brown,

Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, when and where they so as aforesaid met together, each well knowing the character and purpose of the said meeting, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank E. Wilcox, on the first day of November, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did deliver to one W. W. Perkins, Secretary of the said American Fertilizing Company, a certain document, too voluminous to be here set forth, stating certain prices and terms of sale, fixed in pursuance of the said unlawful conspiracy, for the said fetilizer merchandise, in the States of North Carolina, South Carolina, Georgia, Florida, Alabama and Tennessee, for the spring season of the year nineteen hundred and four; he the said Frank E. Wilcox at the time and place when and where he so as aforesaid delivered the said document to the said W. W. Perkins, well knowing the character of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, and during the period of time aforesaid, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, and during the period aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, and during the period of time aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at the City of Nashville, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, a certain notice of shipment, partly written and partly printed, in the words and figures following, that is to say:

"The Armour Fertilizer Works
Owned and operated by
Armour & Company.

Duplicate.
To be Mailed with Bill of
Lading to Customer.

Prudential Building,
Atlanta, Ga.

No. 612
March 10", 1905.

31 We have this day shipped from Nashville, Tenn. storage
To Bramlitt Hdw Co.
Corinth, Miss.
Charge to S. D. Bramlitt. Address same.

No. Bags	Weight of bags.	Brand	Tons.
400	100	King Cotton 8.2.2	20

Order No. 4613.
Bill of lading herewith. Invoice will be mailed from Chicago.
Above quantities shipped 3 10 1905. Freight Terms.....
Car No. 13619. Via L. & N.
Charges prepaid $48.00.
THE ARMOUR FERTILIZER WORKS,
Per ALEX. LESLIE."

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Austin B. Carpenter, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Assistant Secretary of the said Colonial Development Company, unlawfully did sign his name, to wit, "A. B. Carpenter, Asst. Secy." on the face of a certain stock certificate, to wit, certificate No 28, showing the ownership by one Thomas M. Green of fifty-one shares of the capital stock of the said Colonial Development Company; he the said Austin B. Carpenter, at the time and
32 place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his said act to be done in pursuance and to effect the object of the said conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles H. MacDowell, on the twelfth day of January, in the year nineteen hundred and five, and during the period of time aforesaid, at and within the city of Chicago, in the State of Illinois, unlawfully did sign his name, to-wit, "C. H. MacDowell," under the name of the Armour Fertilizer Works, and after the word "by" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Armour and Company, under the trade name of "Armour Fertilizer Works," offered to furnish and deliver at Corinth, in the State of Mississippi to one S. D. Bramlitt, twenty tons of the fertilizer merchandise aforesaid; he the said Charles H. MacDowell, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Acme Manufacturing Company, on the first day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the city of Wilmington, in the State of North Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of six hundred and twenty

dollars for sixty-two shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Alabama Chemcial Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Montgomery, in the State of Alabama, unlawfully did knowingly deliver its certain check drawn upon the Merchants and Planters-Farley National Bank, Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of William DeC. Kessler, as payment for forty-two shares of the capital stock of the said Colonial Development Company, Limited;

33 And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Anderson Phosphate and Oil Company, on the twenty-ninth day of August, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Anderson, in the State of South Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of five hundred and eighty dollars for fifty-eight shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly buy from the Carolina Savings Bank, Charleston, South Carolina, a draft upon the Citizens National Bank, of New York City, for the payment of the sum of seven thousand nine hundred and forty-nine dollars and forty-three cents to the order of one Frank E. Taylor, Vice-President and General Manager of the said Ashepoo Fertilizer Company;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and *and* during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly cause the said Frank E. Taylor to endorse the check last above mentioned payable to the order of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Blackshear Manufacturing Company, on the seventeenth day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Blackshear, in the State of Georgia, unlawfully did knowingly deliver to the Atlantic Coast Line Railroad Company six tons of the fertilizer merchandise aforesaid, consigned and to be shipped

to the firm of E. J. Blume & Company, at Live Oak, in the State of Florida;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Etiwan Fertilizer Company, on the fourteenth day of December, in the year nineteen hundred and
34 three, and during the period of time aforesaid, at and within the town of Cairo, in the State of Georgia, by and through one P. H. Seabrook, its agent, unlawfully did knowingly offer and agree to furnish and deliver to the firm of Wight Brothers, of Cairo aforesaid, thirty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank Burbidge, on the first day of July, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Charleston, in the State of South Carolina, having then and there in his hands a certain check, dated the thirtieth day of June, in the same year nineteen hundred and four, drawn by the said Alabama Chemical Company upon the Continental National Bank of Chicago, for the payment of eleven hundred and forty-two dollars and ninety-seven cents to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Pay to order of People's National Bank, Colonial Development Co., Ltd., F. Burbidge, Pres"; he the said Frank Burbidge then and there, to wit, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William J. McCormack, on the ninth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, having then and there in his hands a certain check dated the fifth day of September, in the same year, drawn by the said New Orleans Acid & Fertilizer Company, upon the Louisiana National Bank of New Orleans, for the payment of seven hundred and fifty dollars to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Colonial Developm't Co., Frank Burbidge, Sec. & Treas., per Wm. J. McCormack"; he the said William J. McCormack, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of en-

gaging in the same, the said Federal Chemical Company, of
35 Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the said State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway fifteen tons of the said fetilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndoff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, and during the period of time aforesaid, at Springfield afore-
36 said, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff & Williams, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Goulding Fertilizer Company, Limited, on the twenty-fifth day of November, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the

town of Cullman, in the State of Alabama, by and through one W. E. Craig, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one John Sutterer, at Cullman aforesaid, three hundred and seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the sixth day of September, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Pensacola, in the State of Florida, having then and there in his hands a certain check, dated the fifth day of September, in the same year nineteen hundred and three, drawn by the said Alabama Chemical Company upon Merchandise Merchants and Planters-Farley National Bank of Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of W. DeC. Kessler, unlawfully did sign his name, to wit, "W. DeC. Kessler," upon the back of the said check next below the written words "Pay to the order of Colonial Development Co."; he the said William DeC. Kessler then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the back of the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the said fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Vice-President of the said Colonial Development Company, unlawfully did sign his name, to wit, "W. DeC. Kessler, V. P." on the face of the said stock certificate in the name of Thomas M. Green; he the said William DeC. Kessler, at the time and place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his act to be done in pursuance and to effect the object of
37 the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Gulfport Cotton Oil Fertilizer and Manufacturing Company, on the twenty-seventh day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-four hundred dollars for and in respect of twelve thousand tons of the fertilizer merchandise aforesaid, allotted to the said Gulfport Cotton Oil, Fertilizer and Manufacturing Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Home Mixture Guano Company, on a day in the year nineteen hundred and three to the said grand jurors

unknown, and during the period of time aforesaid, at and within the City of Columbus, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Jackson Fertilizer Company, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Jackson, in the State of Mississippi, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Marietta Fertilizer Company, on the twenty-first day of July, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by and through one L. W. Reeves, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one James A. Boyd, at Jonesboro aforesaid, seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said James G. Tinsley, on the
38 third day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Nashville, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley; he the said James G. Tinsley, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Meridian Fertilizer Factory, on the seventh day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Cullman, in the State of Alabama, by its agent E. L. Robbins, unlawfully did knowingly offer to furnish to C. A. Steifelmeyer one hundred and fifty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said National Fertilizer Company, on the

second day of March, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashivlle aforesaid, for the payment of the sum of four hundred and eight*l*y dollars to the order of F. Burbidge; he the said William D. Rhea, then
39 and there, to wit, at the time and place when and where he so directed and required the said E. W. Connell to sign his name as aforesaid to the said check, well knowing the nature and contents of the said check, and that his said direction and requirement were in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid; he the said William D. Rhea then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the said document, well knowing the character of the same, and well knowing his said act to be one done in pursuance of and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said New Orleans Acid & Fertilizer Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did

knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars for seventy-five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Old Dominion Guano Company, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-six hundred and twenty dollars, for and in respect of thirteen thousand one hundred tons of the fertilizer merchandise aforesaid, allotted to the said Old Dominion Guano Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William L. Peel, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did sign his name, to wit, "W. L. Peel, Prest.," to a certain check, to wit, a check drawn by the Maddox-Rucker Banking Company upon the National Park Bank, New York, for the payment of twenty-six hundred and twenty dollars to the order of the said Colonial Development Company, Limited; he the said William L. Peel, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Planters Chemical Company, on the thirtieth day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Talladega, in the State of Alabama, unlawfully did knowingly pay the said Colonial Development Company, Limited, the sum of fifty dollars for five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Read Phosphate Company, on the fifth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Hartselle, in the State of Alabama, unlawfully did knowingly offer to sell and deliver to one S. E. Stewart, at that place, forty to fifty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and

three, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too
41 voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid; he the said Abram C. Read, then and there, to wit, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved, Nashville Tenn. Dec. 6 1904," and above the word "Manager," upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof, offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid; he the said Abram C. Read then and there, to wit, at the time and place when and where he so as aforesaid signed his name to the last mentioned document, well knowing the character and contents of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said F. S. Royster Guano Company, on the thirtieth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did knowingly pay to the said Colonial Development Company, Limited the sum of nine thousand three hundred and fourteen dollars and seventy-four cents, on account of such merchandise sold and delivered by the said F. S. Royster Guano Company in excess of its allotment under the aforesaid unlawful conspiracy;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles F. Burroughs, on the twenty-fifth day of March, in the year nineteen hundred and four,
42 and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did sign

his name, to wit, "C. F. Burroughs," under the word "countersigned" and above the words "Vice-President" upon the face of a certain document, partly written and partly printed, too voluminous to be here set forth in full, wherein and whereby the said F. S. Royster Guano Company and he the said Charles F. Burroughs, as Vice-President thereof, offered to sell to one J. W. Carter, and to deliver to him at Maxton, in the State of North Carolina, ten tons of the fertilizer merchandise aforesaid; he the said Charles F. Burroughs, at the time and place when and where he so as aforesaid signed his name to the said document, well knowing the character and contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Savannah Guano Company, on the second day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did knowingly pay to the said Frank Burbidge the sum of nine hundred and forty dollars for ninety-four shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said A. J. Ives, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did sign his name, to wit, "A. J. Ives, Secty. & Treas." to a certain check, to wit, a check drawn by the Savannah Guano Company upon the Merchants National Bank, Savannah, Georgia, for the payment of three thousand one hundred and forty dollars to the order of New York Exchange; he the said A. J. Ives, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Southern States Phosphate and Fertilizer Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of the time afore-
43 said, at and within the City of Augusta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine hundred and sixty dollars for ninety-six shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Chemical and Oil Company, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the

town of Troy, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand dollars for and in respect of one-half of forty thousand tons of the fertilizer merchandise aforesaid allotted to the said Standard Chemical and Oil Company, as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Guano and Chemical Manufacturing Company, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand seven hundred and seventy-four dollars and seventy-seven cents as a partial payment for and in respect of the fertilizer merchandise aforesaid, allotted to the said Standard Guano and Chemical Manufacturing Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Swift & Company, on the first day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by its agent, J. Z. Elliott, unlawfully did knowingly offer to furnish to one W. P. Diehl thirty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

And that, further in pursuance of the said unlawful con-
44 spiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes & Bro., at Oxford, Alabama, a certain letter of the tenor following, to wit:

G. T. Tinsley, Pres't & Treas. Allen Hardison, Sec'y.

Tennessee Chemical Company, Manufacturers and Importers of Ox Fertilizers.

NASHVILLE, TENN., *May* 17–'05.

Messrs. D. P. Haynes & Bro., Oxford, Ala.

DEAR SIRS: I am in receipt of your favor of the 16th and beg to state we could not allow any discount further than the 5 % for cash

settlement. We will be glad to have you settle in cash on this basis if you desire to do so, but we are sorry to state that we are not in a position to offer you any further discount.

Yours truly, T. G. TINSLEY, *President.;*

he the said T. Garland Tinsley then and there, to wit, at the time and place when and where he so as aforesaid caused the said letter to be written and sent as aforesaid, well knowing that the same was so written and sent in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part in engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Company, James G. Tinsley. By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee
45 Chemical Company upon the Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley; he the said T. Garland Tinsley, at the same time and place when and where he so as aforesaid wrote the said endorsement on the back of the said check, well knowing the contents of the same, and that his said act was done in pursuance of and to effect the object of the same unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Valley Fertilizer Company, on the second day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Florence, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars, as a partial payment for and in respect of fertilizer merchandise, aforesaid, allotted to the said Tennessee Valley Fertilizer Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on their parts respectively, of engaging in the same, the said Frank Burbidge, Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson, during the period of time aforesaid, at the City of New York, in the State of New York, the City of Washington, in the District of Columbia, Old Point Comfort and Hot Springs, in the State of Virginia, St. Augustine, in the State of Florida, and French Lick Springs, in the State of Indiana, unlawfully did as officers, directors and attorney of the said Colonial Development Company, Limited,

meet together for the purpose of discussing and attending to the affairs of the said Colonial Development Company, Limited; they the said Frank Burbidge, Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson when and where they so met together aforesaid, well knowing the purpose of such meetings, and well knowing their acts in the premises to be acts in pursuance and to effect the object of the said unlawful conspiracy, and that the same were done as acts on their parts respectively of engaging in the said unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, during the period of time aforesaid, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form aforesaid, unlawfully did engage in a conspiracy in
46 restraint of trade and commerce among the several States;

Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

Second Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the first count described, and were so engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies." And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord, nineteen hundred and three at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the grand jurors unknown, and engage in a conspiracy, among themselves and with such other unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid; which said unlawful conspiracy in this count mentioned then and there was a conspiracy for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described; that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the

said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing and causing to be fixed, uniform and non-competitive prices, by them to be styled "current, rea-
47 sonable market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such times prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be the absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its excess

sales, in which case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of pay-
48 ment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their cooperation in carrying out the said unlawful conspiracy, the said defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, and as being acts on the part of the said corporation and individual defendants respectively of engaging in that conspiracy, are now here in this count charged to be acts by the same corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned, and to have been acts on the part of the said corporation and individual defendants respectively of engaging in the last-named unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a con-
49 spiracy in restraint of trade and commerce among the several States; against the peace and dignity of the said United

States, and contrary to the form of the statute of the same in such case made and provided.

THIRD COUNT.

And the grand jurors, aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the said first count described, and so were engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand-jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in thee said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the said United States, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the said United States, to wit, the offense of engaging in a combination, among themselves and with such other unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid, which said unlawful conspiracy in this count mentioned then and there was a conspiracy to engage in a combination for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described, that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and com-
50 merce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them to be styled "current, reasonable market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be

prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such times prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful combination and ninety per centum thereof during the second year; it being a further element of the said unlawful combination in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on the said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the
51 same on account of its excess sales, in which case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their coöperation in carrying out the said unlawful combination, the said defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and

the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful combination; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, are now here in this count charged to be acts by the said corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy to commit an offense against the said United States: Against
52 the peace and dignity of the said United States; Against the peace and dignity of the said United States, and contrary to the form of the statute in such case made and provided.

FOURTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names

and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State, but by way of and partly through another State, and were severally engaged both in local com-
53 merce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the aforesaid business and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section one of the said Act of Congress, approved July 2, 1890, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, The Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company of Delaware, the Federal Chemical

Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count,
54 to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly engage in a conspiracy in restraint of commerce among the several States, to wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, whereby the said commerce was restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise which were maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the period of such unlawful conspiracy, and greatly in excess of those prices which would have otherwise prevailed in the said States during the period of such unlawful conspiracy, and were therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby earnest money was given to secure the maintenance of such prices and compensation was made to those losing volume of business by reason of maintaining such prices, that is to say:

There was from time to time allotted to each of said corporation defendants and firms an amount of tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms paid into a common fund the sum

of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sums becoming due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which faithfully maintained such uniform and non-competitive prices and failed to make sales and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but sold and delivered through itself and its subsidiary companies a minimum amount thereof required as a guarantee of good faith, received from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid fell short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies made such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, as a penalty upon such excess sales, paid into such common fund like amounts per ton on the said respective kinds of fertilizers, divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means whereby said unlawful conspiracy was effected, a corporation of Ontario, Canada, whose stock was apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was the common fund aforesaid into which was paid the earnest money and penalties on excess sales aforesaid, and from which was paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which the same was operated and directed.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that within the period aforesaid of said unlawful conspiracy in this count of this indictment mentioned, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and did do and perform such acts as acts on their respective parts of engaging in the said unlawful conspiracy in this count of this indictment mentioned, and that each of such defendants at the time and place when and where such defendants did and performed the acts hereinafter so set forth in connection with such defendant respectively, then

and there well knew the character of such act and that such
56 act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, and as an act on the part of such defendant in engaging in the same, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year, nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the
57 tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chatta-
58 nooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the

County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit,
59 "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Ten-

nessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec. 6 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abraham C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P.
60 Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said corporation and individual defendants, during the period of time aforesaid, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

Fifth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the

first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and
61 through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the several States of the conspiracy and the said States of Virginia, Illinois and Kentucy, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commence against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, approved July 2, 1890, the said corporation defendants named in the said first count, to wit, the Virginia-Caro-
62 lina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, and engage in a conspiracy among themselves and with such other unknown corporations and persons, in restraint of commerce among the several States, to-wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, by which unlawful conspiracy said commerce was to be restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the

various points of delivery in the said States of the conspiracy,
63 which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy, and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices, that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to make sales and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose
64 treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary and

common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful conspiracy was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that such act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the object of the same, the said Virgina-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

65 In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one

Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said consiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company,
66 on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of Januáry, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Ten-

nessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle
67 District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his, the said E. W. Connell's name as such Treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fer-

tilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read,"
after the words "Approved—Nashville, Tenn., Dec. 6 1904"
68 and above the word "Manager" upon the face of a certain
other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he, the said Abram C. Read as Manager thereof offer-d to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee

Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

69 SIXTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were

severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress approved July 2, 1890, and entitled "An Act to protect
70 trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and in the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section 5440 of the Revised Statutes of the United States, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standand Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William
71 J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Wil-

liam D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the United States, to wit, to engage in a combination in restraint of commerce among the several States, namely, a combination in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, and did then and there so conspire to commit the aforesaid offense by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy, and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices; that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to
72 make sales and deliveries of such merchandise through itself and its subsidiary — amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment,

as aforesaid; and on the other hand, each of said corporation defendants and firms which, through itself and its subsidiary companies, should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful combination was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid, the corporation defendants and individual defendants, hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that such act was done in pur-
73 suance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and

four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at West
74 Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid,

consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizer, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchan-
75 dise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Arndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day

and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D.
76 Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec. 6 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes

and Bro.," at Oxford, Alabama, that certain letter of the date
77 set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley, By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did conspire to commit an offense against the United States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

ABRAM M. TILLMAN,
United States Attorney.

(Endorsed as follows:) No. 963. United States Circuit Court, Middle District of Tennessee. The United States *vs.* Virginia-Carolina Chemical Company *et als.*

Indictment for violating Act of Congress approved July 2, 1890, and entitled "An Act to Protect Trade and Commerce against unlawful restraints and monopolies," and Section 5440 R. S. U. S.

A True Bill. Robert Q. Stewart, Foreman of the Grand Jury.

Names of Witnesses Sworn and Examined Before the Grand Jury.

J. C. Adams, Henry E. Ahern, Lee Ashcraft, Eugene Atkinson, N. E. Barker, W. F. Barrett, James C. Beck, J. M. Berry, W. W. Bird, L. W. Botts, Clarence Braden, S. D. Bramlitt, A. P. Brantley,
B. D. Brantley, Dewitt Brown, H. C. Brown, Arthur Bussey,
78 Hezekiah Bussey, E. J. Blume, James A. Boyd, William F. Burns, Oscar Bright, J. W. Carter, B. G. Clark, C. W. Comes, E. W. Connell, Charles Earle Currie, R. L. Davis, Joseph Denee, W. P. Diehl, A. M. Dobbs, John V. Dobson, C. H. Drayton, W. L. Dumas, J. B. Duncan, S. Eastland, T. B. Edwards, Culpepper Exum, H. C. Fischer, J. B. Fiser, Albert French, C. A. Gambrill, A. H. George, John E. Gibbs, William Gilchrist, James M. Goldsmith, A. A. Green, E. P. Grice, W. A. Hansel, G. A. Harrington, H. J. Harby, Allen Hardison, L. C. Hayne, J. L. Haynes, D. P. Haynes, R. W. Hendrson, P. W. Hendricks, E. R. Hodgson, junior, E. R. Hodgson, senior, J. L. Horn, W. E. Hudson, T. J. Hunt, R. H. John-

ston, T. V. Kessler, E. M. Kirk, Henry Kirn, H. L. Law, Alexander Leslie, J. A. Lindsey, W. Hampton Logan, Harry Luck, John A. Lewis, W. F. McKensie, Robert F. Maddox, H. W. Malloy, E. R. Manning, H. L. Milligan, J. Allen Moore, M. B. Neece, W. J. Oliver, E. Thomas Orgain, D. B. Osborne, Every M. Paget, W. W. Perkins, Dr. J. D. Plunkett, F. B. Pope, William Price, Charles Rainey, Frederick Rayfield, Isaac W. Read, W. A. Reynolds, I. T. Rhea, W. E. Richards, H. A. Rogers, V. N. Roadstrum, W. G. Sadler, G. W. Sanders, E. M. Sentelle, W. McR. Smith, R. G. Sparrow, J. F. Stackley, C. A. Steifelmeyer, S. E. Stewart, W. B. Stratford, John Sutterer, E. R. Taber, Frank E. Taylor, W. B. Taylor, W. D. Tharin, J. R. Timmerman, J. W. Todd, S. W. Travers, George H. Tucker, E. Van Winkle, J. T. Welch, O. C. Wiley, C. H. Willcox, T. B. Williams, Benjamin L. Willingham, W. S. Wight, E. G. Woodling.

Filed 11:30 A. M., May 25, 1906. H. M. Doak, Clerk, by E. L. Doak, Deputy Clerk. Abram M. Tillman, U. S. Atty.

I, H. M. Doak, Clerk of the Circuit Court of the United States in and for the Middle District of Tennessee, hereby certify that the foregoing is a true, perfect, and complete copy of an indictment filed as thereupon endorsed, etc. In witness whereof I have hereunto signed my name and affixed the seal of said court, at my office, this the 26th day of May, 1906.

[SEAL OF COURT.] H. M. DOAK, *Clerk.*

79 *Order Awarding Writs of Habeas Corpus and Certiorari.*

Filed July 11th, 1906

In the Matter of the Petition of JAMES G. TINSLEY for Writs of *Habeas Corpus* and Certiorari.

JAMES G. TINSLEY, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

Let the writ of *habeas corpus*, in due form of law, as prayed for in the within petition be issued directed to Morgan Treat, United States Marshal for the Eastern District of Virginia, commanding him forthwith to make return of said writ and to produce the body of said petitioner, James G. Tinsley, before this Court, to be dealt with according to law; and that the writ of certiorari as prayed for in said petition be issued and made returnable forthwith.

Richmond, Va., July 11th, 1906.

NATHAN GOFF,
Presiding Circuit Judge, April Term, 1906.

Writ of Habeas Corpus.

80 UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

To Morgan Treat, United States Marshal for the Eastern District of Virginia, or any of his deputies:

We command you that the body of James G. Tinsley in your custody detained, as it is said, together with the day and cause of his caption and detention, you safely have before our Circuit Court of the United States, within and for the District aforesaid, forthwith, to do and receive all and singular those things which the said Circuit Court of the United States, within and for the District aforesaid, shall then and there consider of him in this behalf; and have you then and there this writ.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond, this 11th day of July, in the year of our Lord one thousand nine hundred and six, and of our Independence the 131st year.

[Seal United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Cerk of the Circuit Court of the United States for the Eastern District of Virginia.

Marshal's Return.

To the Circuit Court of the United States for the Eastern District of Virginia:

Morgan Treat, United States Marshal for the said Eastern District of Virginia, to whom the annexed writ is directed, has now before the court the body of James G. Tinsley therein named, as thereby commanded. And I certify that the cause of the detention of the said James G. Tinsley is a warrant directed to me and issued by the Honorable Edmund Waddill, Jr., Judge, of the said Eastern Dis-
81 trict of Virginia, on July 11, 1906, under the provisions of section 1014 of the Revised Statutes of the United States, commanding the imprisonment and removal of the said James G. Tinsley to the Middle District of Tennessee for trial in the Circuit Court of the United States for said last mentioned district upon a certain indictment found in said last mentioned court against him, the said James G. Tinsley and others, a copy of which warrant of removal is set out in the petition of the said James G. Tinsley herein; and that a full, true and correct statement of all the proceedings before the said Judge upon the application for the arrest and commitment of the said James G. Tinsley and his removal to said Middle District of Tennessee for trial is contained and set forth in the statement or order of said Judge, a copy of which is set forth in section 7 of the said James G. Tinsley's petition and in the documents made a part thereof and therein referred to.

MORGAN TREAT,
U. S. Marshal for the Eastern District of Virginia.

Dated this 12th day of July, A. D. 1906.

Writ of Certiorari.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

The President of the United States of America to the Judges of the District Court of the United States for the Eastern District of Virginia:

82 We being informed that there is now pending before you a suit in which the United States of America is plaintiff and James G. Tinsley is defendant; and we being willing, for certain reasons, that the said case and the record and proceedings therein should be certified by the Judge of the District Court of the United States for the Eastern District of Virginia and removed into the Circuit Court of the United States for the Eastern District of Virginia, sitting at Richmond, Virginia;

We do hereby command you forthwith that you send forthwith to the said Circuit Court of the United States for the Eastern District of Virginia, as aforesaid, the record and proceedings in said case, so that the said Circuit Court of the United States for the Eastern District of Virginia may act thereon as of right and according to law ought to be done.

Witness, The Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond, this 11th day of July, in year of our Lord one thousand nine hundred and six, and of our Independence the 131st year.

[Seal United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Return of United States District Judge.

The Clerk of the United States District Court is hereby directed to deliver to the Judges of the United States Circuit Court within and for the Eastern District of Virginia the record and proceedings mentioned in the within writ.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

Richmond, Va., July 11", 1906.

83 *Transcript of Proceedings Before Honorable Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia.*

The following proceedings were had before Honorable Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia, at Richmond, Virginia, commencing on the 10th day of July, 1906, and ending on the 11th day of July, 1906.

THE UNITED STATES
versus
JAMES G. TINSLEY.

Writ of Certiorari.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

The President of the United States of America to the Judges of the District Court of the United States for the Eastern District of Virginia:

We being informed that there is now pending before you a suit in which the United States of America is plaintiff and James G. Tinsley is defendant; and we being willing, for certain rea-
84 sons, that the said case and the record and proceedings therein should be certified by the Judge of the District Court of the United States for the Eastern District of Virginia and removed into the Circuit Court of the United States for the Eastern District of Virginia, sitting at Richmond, Virginia.

We do hereby command you forthwith that you send forthwith to the said Circuit Court of the United States for the Eastern District of Virginia, as aforesaid, the record and proceedings in said case, so that the said Circuit Court of the United States for the Eastern District of Virginia may act thereon as of right and according to law ought to be done.

Witness, The Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond, this 11th day of July, in the year of our Lord one thousand nine hundred and six, and of our Independence the 131st year.

[Seal of United States Circuit Court.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Return of United States District Judge.

The Clerk of the United States District Court is hereby directed to deliver to the Judges of the United States Circuit Court within and for the Eastern District of Virginia the record and proceedings mentioned in the within writ.

EDMUND WADDILL, JR.,
U. S. District Judge.

Richmond, Va., July 11", 1906.

85 *Complaint.*

Filed July 10th, 1906.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

On this 10th day of July, A. D. 1906, at the City of Richmond, in the said District, before the Hon. Edmund Waddill, Jr., Judge of the District Court of the United States of America for the said

District, comes Morgan Treat, United States Marshal in and for the said District, and upon his oath complains and says: that he has good cause to believe and does firmly believe that James G. Tinsley, of Richmond, Virginia, stands indicted by the Grand Jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said James G. Tinsley on the eighth day of July in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, being during said period President of the Marietta Fertilizer Company, a corporation existing under and by the laws of the State of Georgia, and Vice-President of the Tennessee Chemical Company, a corporation existing under and authorized by the laws of the State of Tennessee, did in the said Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said James G. Tinsley did unlawfully conspire with divers other persons and
86 corporations to commit an offense against the United States, to-wit, the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States, all as more fully set out in an indictment filed in the said Circuit Court of the United States in and for the Middle District of Tennessee on May 25, 1906, in cause No. 963, entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," a certified copy of which indictment is hereto attached and made a part of this complaint; and complainant therefore charges that the said James G. Tinsley did commit the said offenses against the United States in manner and form as set forth in said indictment.

Complainant furthermore avers upon information and belief that in pursuance of an order of said Circuit Court of the United States for the Middle District of Tennessee a bench warrant has been issued from said Court for the arrest of said James G. Tinsley and delivered to the Marshal of said Court, who after due search has returned said warrant "not found" in said Middle District of Tennessee; and that said James G. Tinsley is now believed to be within the Eastern District of Virginia, of which District he is a resident.

Wherefore this complainant prays that the said James G. Tinsley may be arrested and imprisoned and removed or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee, and further dealt with according to law.

MORGAN TREAT, *Marshal.*

Subscribed and sworn to before me by the above named Morgan Treat the day and year first above written.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

87 *Certified Copy of Indictment.*

In the Circuit Court of the United States of America for the Middle District of Tennessee, of the April Term, in the Year of Our Lord Nineteen Hundred and Six.

MIDDLE DISTRICT OF TENNESSEE, *sct:*

The grand jurors for the United States of America, inquiring for the Middle District of Tennessee, upon their oath present, that before and on the eighth day of July, in the year of our Lord nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year of our Lord nineteen hundred and five, the following named corporations, respectively organized and existing under and authorized by the laws of the several States and of the foreign country here named in connection with them, and hereafter in this indictment called corporation defendants, to wit, the Virginia-Carolina Chemical Company, of New Jersey, Armour and Company, of Illinois, the Acme Manufacturing Company, of North Carolina, the Alabama Chemical Company, of New Jersey, the Anderson Phosphate & Oil Company, of South Carolina, the Ashepoo Fertilizer Company, of South Carolina, the Blackshear Manufacturing Company, of Georgia, the Etiwan Fertilizer Company, of South Carolina, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, The Furman Farm Improvement Company, of Georgia, the Goulding Fertilizer Company, Limited, of Great Britain and Ireland, The Goulding Fertilizer Company, of Florida, the Gulfport Cotton Oil, Fertilizer & Manufacturing Company, of Georgia, the Home Mixture Guano Company, of Georgia, the Jackson Fertilizer Company, of Mississippi, the Marietta Fertilizer Company, of Georgia, the Meridian Fertilizer Factory, of Mississippi, the National Fertilizer Company, of Tennessee, the New Orleans Acid and Fertilizer Company, of New Jersey, the Old Dominion Guano Company, of Georgia, the Planters Chemical Company, of Alabama, the Read Phosphate Com-
88 pany, of West Virginia, the F. S. Royster Guano Company, of Virginia, the Savannah Guano Company, of Georgia, the Southern States Phosphate and Fertilizer Company, of Georgia, the Standard Chemical & Oil Company, of Alabama, the Standard Guano and Chemical Manufacturing Company, of Louisiana, Swift & Company, of Illinois, the Tennessee Chemical Company, of Tennessee, and the Tennessee Valley Fertilizer Company, of Alabama, and certain firms, to wit, the firm of A. D. Adair and McCarty Brothers and the firm of Wilcox, Ives & Company, did carry on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereafter in this indictment called the States of the conspiracy, as wholesale dealers in complete and alkaline fertilizers and in acid phosphates, nitrates, and potash salts suitable for fertilizers, which then were useful and valuable articles of merchandise, indispensable for use on the soil of the said States of the conspiracy in order that the staple

crops of those States might be raised therefrom; that the following named persons, hereafter in this indictment called individual defendants, to wit, Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, of the said Virginia-Carolina Chemical Company, and J. Rice Smith, agent and manager of the said Virginia-Carolina Chemical Company, and president of the Georgia Chemical Works hereinafter mentioned, Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, Fred G. Brown, president and treasurer of the said Anderson Phosphate & Oil Company, Frank Burbidge, president, and William J. McCormack, treasurer of the said Etiwan Fertilizer Company, George Braden, president of the said Federal Chemical Company, of Delaware, and also of the said Federal Chemical Company, of Kentucky, Augustus D. Adair and James D. McCarty, officers and agents of the said Furman Farm Improvement Company and members of the said firm of A. D. Adair and McCarty Brothers, William DeC. Kessler, secretary and treasurer of the said Goulding Fertilizer Company, Limited, James G. Tinsley, president of the said Marietta Fertilizer Company and vice-president of the said Tennessee Chemical Company, William D. Rhea, general manager of the said National Fertilizer Company, William L. Peel, president of the said Old Dominion Guano Company, Abram C. Read, vice-president and general manager, and Isaac Mayo Read, agent, of the said Read Phosphate Company, Frank S. Royster, president, and Charles F. Burroughs, vice-
89 president, of the said F. S. Royster Guano Company, A. J. Ives, whose Christian name is to the said grand jurors unknown, secretary and treasurer of the said Savannah Guano Company and a member of the said firm of Wilcox, Ives & Company, T. Porter Fleming, vice-president of the said Southern States Phosphate and Fertilizer Company, and T. Garland Tinsley, president and treasurer of the said Tennessee Chemical Company, in their said several capacities as officers, managers, agents, and attorneys of the said corporation defendants and members of the said firms, and on behalf of those corporations and firms, during the period of time in this indictment first aforesaid, did carry on the business aforesaid; that in so carrying on the said business the said defendants, that is to say, the said corporation and individual defendants, did sell and deliver large quantities of the said merchandise within the limits of the said States of the conspiracy from the respective places of business of the said corporation defendants and the said firms, located at different points within those States, to retail dealers in and consumers of such merchandise, in such States respectively, and did also ship large quan-ties of the same from their respective places of business, located in the said States of the conspiracy and also in the States of Virginia, Illinois, and Kentucky, into and through other of the said States than those in which their said places of business were located; that in so carrying on the said business and shipping the said merchandise from one of the said States into and through another or others thereof, the said defendants, during the period

aforesaid, were engaged in trade and commerce among the States of this Union within the meaning of the Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in so carrying on the said business, trade and commerce, the said Virginia-Carolina Chemical Company and the said Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, and J. Rice Smith, agent and manager, of the said Virginia-Carolina Chemical Company, did make use of and operate a portion of their said business, trade and commerce through each of certain other corporations, to wit, the American Fertilizing Company, of Virginia, the Birmingham Fertilizer Company, of Virginia, the Birmingham Fertilizer Company, of Alabama, the Coweta Fertilizer Company, of Georgia, the Georgia Chemical Works, of Georgia, the Navassa Guano Company, of North Carolina, of either the whole or a majority of the capital stock of which said corporations respectively
90 the said Virginia-Carolina Chemical Company was the owner; that in so carrying on the said business, trade and commerce, the said Armour and Company and the said Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, did make use of and operate all of their said business, trade and commerce through a certain other corporation called the Tuscarora Fertilizer Company, of New Jersey, and a certain trade name, to wit, the trade name of Armour Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Furman Farm Improvement Company and the said firm of A. D. Adair and McCarty Brothers did make use of and operate a portion of their said business trade, and commerce under the trade name of Chickamauga Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Federal Chemical Company, of Delaware, and the said Federal Chemical Company of Kentucky, did make use of, and operate a portion of their said business, trade and commerce through, the names of Century Phosphate Company, Fox Chemical Company, Branch, Globe Fertilizer Company, Branch, and Tennessee Phosphate Company; that in so carrying on the said business, trade and commerce, the said National Fertilizer Company did make use of, and operate a portion of its said business, trade and commerce through, the corporate name of American Guano Company and the trade name of Nashville Guano Company; that in so carrying on the said business, trade and commerce, the said Read Phosphate Company did make use of, and operate a portion of its said business, trade and commerce through the corporate name of Empire Guano Company; that in so carrying on the said business, trade and commerce, the said F. S. Royster Guano Company did make use of, and operate a portion of its said business, trade and commerce through the trade name of Atlantic Chemical Company and the corporate name of Columbia Guano Company; that in so carrying on the said business, trade and commerce, the said Swift and Company did make

use of, and operate the whole of its said business, trade and commerce through, the trade name of Swift Fertilizer Works; and that in so carrying on the said business, trade and commerce, the said Tennessee Chemical Company did make use of, and operate a portion of its said business, trade and commerce through, the trade name of Continental Fertilizer Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that of the total volume of such business, trade and commerce then so being carried on by the said defendants and their competitors, the said defendants together had and controlled
91 the principal part, that is to say, ninety per centum thereof; and that because the said corporation defendants and the said firms were in fact separate and distinct from each other, they should have conducted their interstate trade and commerce strictly in competition with each other, during the said period, and then would have so conducted the same but for the unlawful conspiracy in restraint of the said business, trade and commerce in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, at and within the said Middle District of Tennessee, in violation of the provisions of said section one of the said Act of Congress, unlawfully did knowingly engage in a conspiracy in restraint of the said business, trade and commerce, so then being carried on by them in the manner aforesaid, whereby the said business, trade and commerce was restrained in the several ways and by the several means now here set forth and described, that is to say:

Competition as to the prices at which the said merchandise was sold and delivered by the said corporation defendants and the said firms in the said States of the conspiracy, which before the period of time in this indictment first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was prevented and destroyed by the said defendant from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them styled "current, reasonable market prices," for the said merchandise so sold and delivered by the said corporation defendants and the said firms in those States, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so fixed and caused to be fixed; which said uniform and non-competitive prices were prices greatly in excess of the prices which but for the said unlawful conspiracy would at such times have prevailed for the said merchandise in the said business, trade and commerce, and were prices therefore unreasonable, and were a tax on the people of the said States of the said conspiracy amounting to a large sum of money, to wit, four million dollars, annually during the continuance of the same.

For and on account of such quantity of the said merchandise as was sold and delivered as aforesaid by any of such corporation de-

fendants or of such firms, in excess of amounts allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and de-
92 livered in excess, was, by the corporation defendants and firms so selling and delivering the same, paid into a common fund, held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, compensated, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as sold and delivered less than the amounts so allotted to them respectively, so it was not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy that each of the said corporation defendants and of the said firms also paid into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be the absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm, in disposing of its said allotment in carrying on the said business, trade and commerce, on its part faithfully should exercise every reasonable effort and due business diligence to maintain the prices so fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its said excess sales, in which case an equal amount was returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also made uniform and non-competitive as between all of the said corporation defendants and the said firms, in the said business, trade and commerce, among the said States of the conspiracy.

As a convenient intermediary and common agent between the said corporation defendants and the said firms, respectively and as a means of securing their co-operation in carrying out the said unlawful conspiracy, the said defendants made use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company, Limited, was also allowed and re-
93 quired to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of September, in the year nineteen hundred and three, during the period of time aforesaid, at and within the City of New York, in the State of New York, unlawfully did knowingly, deposit with the Continental Trust Company, of the said City of New York, the sum of twenty-six thousand dollars, in connection with the purchase of by the said trust company on behalf of the said Virginia-Carolina Chemical Company, and in the name of one Montrose Stuart, a clerk in the office of the said trust company, of twenty-six hundred shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Samuel T. Morgan, on the seventh day of October, in the same year nineteen hundred and three, and during the period of time aforesaid, at and within the said city of New York, in the State of New York, unlawfully did deliver to the said William DeC. Kessler, Vice-President of the said Colonial Development Company, Limited, three checks drawn by the said Virginia-Carolina Chemical Company, one upon the National City Bank, of New York City aforesaid, for eighty thousand dollars, another on the Bank of America, of New York City aforesaid, for fifty thousand dollars, and the other on the National Park Bank, of New York City aforesaid, for thirty-five thousand and four hundred and sixty-eight dollars, aggregating one hundred and sixty-five thousand and four hundred and sixty-eight dollars, as and for a payment, by the said Virginia-Carolina Chemical Company, to the said Colonial Development Company, Limited, of twenty cents a ton on its allotment under the said unlawful conspiracy; he the said Samuel T. Morgan, when and where he so as aforesaid delivered the said checks to the said William DeC. Kessler, well knowing the character and purpose of the same, and well knowing that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as acts on their parts respectively of engaging in the same, the said Samuel T. Morgan,
Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox,
94 J. Rice Smith, Austin B. Carpenter, Charles G. Wilson,
Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, on the seventeenth day of September, in the year nineteen hundred and three, and during the period aforesaid, at the said City of New York, in the said State of New York, unlawfully did meet together to discuss and further the object of the said unlawful conspiracy; they the said Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy,

Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, when and where they so as aforesaid met together, each well knowing the character and purpose of the said meeting, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank E. Wilcox, on the first day of November, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did deliver to one W. W. Perkins, Secretary of the said American Fertilizing Company, a certain document, too voluminous to be here set forth, stating certain prices and terms of sale, fixed in pursuance of the said unlawful conspiracy, for the said fertilizer merchandise, in the States of North Carolina, South Carolina, Georgia, Florida, Alabama and Tennessee, for the spring season of the year nineteen hundred and four; he the said Frank E. Wilcox at the time and place when and where he so as aforesaid delivered the said document to the said W. W. Perkins, well knowing the character of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, and during the period of time aforesaid, at the town of Decherd, in the said Middle District of Tennessee, by and through one
95 F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, and during the period aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to

furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, and during the period of time aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at the City of Nashville, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, a certain notice of shipment, partly written and partly printed, in the words and figures following, that is to say:

"The Armour Fertilizer Works
Owned and operated by
Armour & Company.
Prudential Building,
Atlanta, Ga.

Duplicate.
To be Mailed with Bill of
Lading to Customer.

No. 612
March 10", 1905.

96 We have this day shipped from Nashville, Tenn. storage
To Bramlitt Hdw Co.
Corinth, Miss.
Charge to S. D. Bramlitt. Address same.

No. Bags.	Weight of bags.	Brand	Tons.
400	100	King Cotton 8.2.2	20

Order No. 4613.
Bill of lading herewith. Invoice will be mailed from Chicago.
Above quantities shipped 3 10 1905. Freight Terms.....
Car No. 13619. Via L. & N.
Charges prepaid $48.00.
THE ARMOUR FERTILIZER WORKS,
Per ALEX. LESLIE."

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the

said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Austin B. Carpenter, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Assistant Secretary of the said Colonial Development Company, unlawfully did sign his name, to wit, "A. B. Carpenter, Ass't Sec'y" on the face of a certain stock certificate, to wit, certificate No. 28, showing the ownership by one Thomas M. Green of fifty-one shares of the capital stock of the said Colonial Development Company; he the said Austin B. Carpenter, at the time and
97 place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his said act to be done in pursuance and to effect the object of the said conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles H. MacDowell, on the twelfth day of January, in the year nineteen hundred and five, and during the period of time aforesaid, at and within the city of Chicago, in the State of Illinois, unlawfully did sign his name, to-wit, "C. H. MacDowell," under the name of the Armour Fertilizer Works, and after the word "by" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Armour and Company, under the trade name of "Armour Fertilizer Works," offered to furnish and deliver at Corinth, in the State of Mississippi to one S. D. Bramlitt, twenty tons of the fertilizer merchandise aforesaid; he the said Charles H. MacDowell, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Acme Manufacturing Company, on the first day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the city of Wil-

mington, in the State of North Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of six hundred and twenty dollars for sixty-two shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Alabama Chemical Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Montgomery, in the State of Alabama, unlawfully did knowingly deliver its certain check drawn upon the Merchants and Planters-Farley National Bank, Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of William DeC. Kessler, as payment for forty-two shares of the capital stock of the said Colonial Development Company, Limited;

98 And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Anderson Phosphate and Oil Company, on the twenty-ninth day of August, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Anderson, in the State of South Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of five hundred and eighty dollars for fifty-eight shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly buy from the Carolina Savings Bank, Charleston, South Carolina, a draft upon the Citizens' National Bank, of New York City, for the payment of the sum of seven thousand nine hundred and forty-nine dollars and forty-three cents to the order of one Frank E. Taylor, Vice-President and General Manager of the said Ashepoo Fertilizer Company;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and *and* during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly cause the said Frank E. Taylor to endorse the check last above mentioned payable to the order of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Blackshear Manufacturing Company, on the seventeenth day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Blackshear, in the State of Georgia, unlawfully did know-

ingly deliver to the Atlantic Coast Line Railroad Company six tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of E. J. Blume & Company, at Live Oak, in the State of Florida;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Etiwan Fertilizer Company, on the fourteenth day of December, in the year nineteen hundred
99 and three, and during the period of time aforesaid, at and within the town of Cairo, in the State of Georgia, by and through one P. H. Seabrook, its agent, unlawfully did knowingly offer and agree to furnish and deliver to the firm of Wight Brothers, of Cario aforesaid, thirty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank Burbidge, on the first day of July, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Charleston, in the State of South Carolina, having then and there in his hands a certain check, dated the thirtieth day of June, in the same year nineteen hundred and four, drawn by the said Alabama Chemical Company upon the Continental National Bank of Chicago, for the payment of eleven hundred and forty-two dollars and ninety-seven cents to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Pay to order of People's National Bank, Colonial Development Co., Ltd., F. Burbidge, Pres"; he the said Frank Burbidge then and there, to wit, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William J. McCormack, on the ninth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, having then and there in his hands a certain check dated the fifth day of September, in the same year, drawn by the said New Orleans Acid & Fertilizer Company, upon the Louisiana National Bank of New Orleans, for the payment of seven hundred and fifty dollars to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Colonial Developm't Co., Frank Burbidge, Sec. & Treas., per Wm. J. McCormack"; he the said William J. McCormack, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy,

and to effect the object of the same, and as an act on its part of engaging in the same, the said Federal Chemical Company, of
100 Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the said State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, and during the period of time aforesaid, at Springfield afore-
101 said, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff & Williams, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Goulding Fertilizer Company, Limited, on the twenty-fifth day of November, in the year nineteen

hundred and three, and during the period of time aforesaid, at and within the town of Cullman, in the State of Alabama, by and through one W. E. Craig, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one John Sutterer, at Cullman aforesaid, three hundred and seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the sixth day of September, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Pensacola, in the State of Florida, having then and there in his hands a certain check, dated the fifth day of September, in the same year nineteen hundred and three, drawn by the said Alabama Chemical Company upon Merchandise Merchants and Planters-Farley National Bank of Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of W. DeC. Kessler, unlawfully did sign his name, to wit, "W. DeC. Kessler," upon the back of the said check next below the written words "Pay to the order of Colonial Development Co."; he the said William DeC. Kessler then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the back of the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the said fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Vice-President of the said Colonial Development Company, unlawfully did sign his name, to wit, "W. DeC. Kessler, V. P." on the face of the said stock certificate in the name of Thomas M. Green; he the said William DeC. Kessler, at the time and place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his act to be done in pursuance and to effect the object
102 of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Gulfport Cotton Oil Fertilizer and Manufacturing Company, on the twenty-seventh day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-four hundred dollars for and in respect of twelve thousand tons of the fertilizer merchandise aforesaid, allotted to the said Gulfport Cotton Oil, Fertilizer and Manufacturing Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy,

and to effect the object of the same, and as an act on its part of engaging in the same, the said Home Mixture Guano Company, on a day in the year nineteen hundred and three to the said grand jurors unknown, and during the period of time aforesaid, at and within the City of Columbus, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Jackson Fertilizer Company, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Jackson, in the State of Mississippi, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Marietta Fertilizer Company, on the twenty-first day of July, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by and through one L. W. Reeves, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one James A. Boyd, at Jonesboro aforesaid, seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said James G. Tinsley, on the third
103 day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Nashville, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley; he the said James G. Tinsley, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Meridian Fertilizer Factory, on the seventh day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Cullman, in the State of Alabama, by its agent E. L. Robbins, un-

lawfully did knowingly offer to furnish to C. A. Steifelmeyer one hundred and fifty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge; he the said
104 William D. Rhea, then and there, to wit at the time and place when and where he so directed and required the said E. W. Connell to sign his name as aforesaid to the said check, well knowing the nature and contents of the said check, and that his said direction and requirement were in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid; he the said William D. Rhea then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the said document, well knowing the character of the same, and well knowing his said act to be one done in pursuance of and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said New Orleans Acid & Fertilizer Company, on

the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars for seventy-five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Old Dominion Guano Company, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-six hundred and twenty dollars, for and in respect of
105 thirteen thousand one hundred tons of the fertilizer merchandise aforesaid, allotted to the said Old Dominion Guano Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William L. Peel, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did sign his name, to wit, "W. L. Peel, Prest.," to a certain check, to wit, a check drawn by the Maddox-Rucker Banking Company upon the National Park Bank, New York, for the payment of twenty-six hundred and twenty dollars to the order of the said Colonial Development Company, Limited; he the said William L. Peel, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Planters Chemical Company, on the thirtieth day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Talladega, in the State of Alabama, unlawfully did knowingly pay the said Colonial Development Company, Limited, the sum of fifty dollars for five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Read Phosphate Company, on the fifth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Hartselle, in the State of Alabama, unlawfully did knowingly offer to sell and deliver to one S. E. Stewart, at that place, forty to fifty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of en-

gaging in the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here
106 set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid; he the said Abram C. Read, then and there, to wit, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved, Nashville, Tenn. Dec. 6, 1904," and above the word "Manager," upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof, offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid; he the said Abram C. Read then and there, to wit, at the time and place when and where he so as aforesaid signed his name to the last mentioned document, well knowing the character and contents of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said F. S. Royster Guano Company, on the thirtieth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine thousand three hundred and fourteen dollars and seventy-four cents, on account of such merchandise sold and delivered by the said F. S. Royster Guano Company in excess of its allotment under the aforesaid unlawful conspiracy;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles F. Burroughs, on the
107 twenty-fifth day of March, in the year nineteen hundred and four, and during the period of time aforesaid, at and within

the City of Norfolk, in the State of Virginia, unlawfully did sign his name, to wit, "C. F. Burroughs," under the word "countersigned" and above the words "Vice-President" upon the face of a certain document, partly written and partly printed, too voluminous to be here set forth in full, wherein and whereby the said F. S. Royster Guano Company and he the said Charles F. Burroughs, as Vice-President thereof, offered to sell to one J. W. Carter, and to deliver to him at Maxton, in the State of North Carolina, ten tons of the fertilizer merchandise aforesaid; he the said Charles F. Burroughs, at the time and place when and where he so as aforesaid signed his name to the said document, well knowing the character and contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Savannah Guano Company, on the second day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did knowingly pay to the said Frank Burbidge the sum of nine hundred and forty dollars for ninety-four shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said A. J. Ives, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did sign his name, to wit, "A. J. Ives, Secty. & Treas." to a certain check, to wit, a check drawn by the Savannah Guano Company upon the Merchants National Bank, Savannah, Georgia, for the payment of three thousand one hundred and forty dollars to the order of New York Exchange; he the said A. J. Ives, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Southern States Phosphate and Fertilizer Company, on the fifth day of September, in the year nineteen
108 hundred and three, and during the period of the time aforesaid, at and within the City of Augusta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine hundred and sixty dollars for ninety-six shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said lawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Chemical and Oil Company, on the third day of October, in the year nineteen hundred and three,

and during the period of time aforesaid, at and within the Town of Troy, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand dollars for and in respect of one-half of forty thousand tons of the fertilizer merchandise aforesaid allotted to the said Standard Chemical and Oil Company, as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Guano and Chemical Manufacturing Company, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand seven hundred and seventy-four dollars and seventy-seven cents as a partial payment for and in respect of the fertilizer merchandise aforesaid, allotted to the said Standard Guano and Chemical Manufacturing Company, as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Swift & Company, on the first day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by its agent, J. Z. Elliott, unlawfully did knowingly offer to furnish to one W. P. Diehl thirty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

And that, further in pursuance of the said unlawful con-
109 spiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes & Bro., at Oxford, Alabama, a certain letter of the tenor following, to wit:

T. G. Tinsley, Pres't & Treas. Allen Hardison, Sec'y.

Tennessee Chemical Company, Manufacturers and Importers of Ox Fertilizers.

NASHVILLE, TENNESSEE, *May* 17, '05.

Messrs. D. P. Haynes & Bro., Oxford, Ala.

DEAR SIRS:—I am in receipt of your favor of the 16th and beg to state we could not allow any discount further than the 5% for cash settlement. We will be glad to have you settle in cash on this basis if you desire to do so, but are sorry to state we are not in a position to offer you any further discount.

Yours truly, T. G. TINSLEY, *President.;*

he the said T. Garland Tinsley then and there, to wit, at the time and place when and where he so as aforesaid caused the said letter to be written and sent as aforesaid, well knowing that the same was so written and sent in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part in engaging in the same;

And that further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Company, James G. Tinsley. By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon the Mercantile National Bank, New York, for the payment of
110 sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley; he the said T. Garland Tinsley, at the same time and place when and where he so as aforesaid wrote the said endorsement on the back of the said check, well knowing the contents of the same, and that his said act was done in pursuance of and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Valley Fertilizer Company, on the second day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Florence, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars, as a partial payment for and in respect of fertilizer merchandise aforesaid, allotted to the said Tennessee Valley Fertilizer Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on their parts respectively, of engaging in the same, the said Frank Burbidge,

Wm. De C. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson, during the period of time aforesaid, at the City of New York, in the State of New York, the City of Washington, in the District of Columbia, Old Point Comfort and Hot Springs, in the State of Virginia, St. Augustine, in the State of Florida, and French Lick Springs, in the State of Indiana, unlawfully did as officers, directors and attorney of the said Colonial Development Company, Limited, meet together for the purpose of discussing and attending to the affairs of the said Colonial Development Company, Limited; they the said Frank Burbidge, Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson when and where they so met together aforesaid, well knowing the purpose of such meetings, and well knowing their acts in the premises to be acts in pursuance and to effect the object of the said unlawful conspiracy, and that the same were done as acts on their parts respectively of engaging in the said unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, during the period of time aforesaid, and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form aforesaid, unlawfully did engage in a conspiracy in restraint of trade and commerce among the several States; Against the
111 peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

SECOND COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the first count described, and were so engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord, nineteen hundred and three at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the grand jurors unknown, and engage in a conspiracy among themselves and with such other

unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid; which said unlawful conspiracy in this count mentioned then and there was a conspiracy for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described; that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing and causing to be fixed, uniform and non-competitive prices, by them to be styled "current, reason-
112 able market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such times prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum ther-of during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be the

absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on the said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its excess sales, in which case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of pay-
113 ment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their co-operation in carrying out the said unlawful conspiracy, the said defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, and as being acts on the part of the said corporation and individual defendants respectively of engaging in that conspiracy, are now here in this count charge to be acts by the same corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned, and to have been acts on the part of the said corporation and individual defendants respectively of engaging in the last-named unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the

said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of trade and commerce among the several States;
114 against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

THIRD COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the said first count described, and so were engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the said United States, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the said United States, to wit, the offense of engaging in a combination, among themselves and with such other unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid, which said unlawful conspiracy in this count mentioned then and there was a conspiracy to engage in a combination for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and com-
115 merce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them to be styled "current,

reasonable market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such time prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful combination and ninety per centum thereof during the second year; it being a further element of the said unlawful combination in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be — absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on the said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its excess sales, in which
116 case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their cooperation in carrying out the said unlawful combination, the said

defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful combination; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, are now here in this count charged to be acts by the said corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a con-
117 spiracy to commit an offense against the said United States; Against the peace and dignity of the said *said* United States; *Against the peace and dignity of the said United States*, and contrary to the form of the statute in such case made and provided.

FOURTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in

connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State, but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchan-
118 dise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the aforesaid business and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section one of the said Act of Congress, approved July 2, 1890, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Ala-

bama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company,
119 and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William De C. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly engage in a conspiracy in restraint of commerce among the several States, to wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, whereby the said commerce was restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise which were maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the period of such unlawful conspiracy, and greatly in excess of those prices which would have otherwise prevailed in the said States during the period of such unlawful conspiracy, and were therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby earnest money was given to secure the maintenance of such prices and compensation was made to those losing volume of business by reason of maintaining such prices, that is to say:

There was from time to time allotted to each of said corporation

defendants and firms an amount of tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporations defendants and firms paid into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sums becoming due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which faithfully maintained such uniform and non-competitive prices and failed to make sales
120 and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but sold and delivered through itself and its subsidiary companies a minimum amount thereof required as a guarantee of good faith, received from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid fell short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies made such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, as a penalty upon such excess sales, paid into such common fund like amounts per ton on the said respective kinds of fertilizers, divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means whereby said unlawful conspiracy was effected, a corporation of Ontario, Canada, whose stock was apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was the common fund aforesaid into which was paid the earnest money and penalties on excess sales aforesaid, and from which was paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which the same was operated and directed.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that within the period aforesaid of said unlawful conspiracy in this count of this indictment mentioned, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and did do and perform such acts as acts on their respective parts of engaging in the said unlawful conspiracy in this count of this indictment mentioned, and that each of such defendants at the time and place when

and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that such
121 act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, and as an act on the part of such defendant in engaging in the same, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year, nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the
122 tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to

Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee,
123 unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit,
124 "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawul conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec. 6, 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abraham C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P.
125 Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said corporation and individual defendants, during the period of time aforesaid, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

FIFTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen

hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the
126 other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so

carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, approved July 2, 1890, the said corporation de-
127 fendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, and engage in a conspiracy among themselves and with such other unknown corporations and persons, in restraint of commerce among the several States, to-wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid by which unlawful conspiracy said commerce was to be restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the

various points of delivery in the said States of the conspiracy,
128 which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy, and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices, that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to make sales and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales as aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants
and firms and paid for by them at ten dollars a share; whose
129 treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary

and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful conspiracy was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that such act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

130 In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Dercherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one

Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesand, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company,
131 on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of

Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District
132 of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his, the said E. W. Connell's name as such Treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fer-

tilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tenneess, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn., Dec. 6 1904" and
133 above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for

the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

134 SIXTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United

States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An
135 Act to protect trade and commerce against unlawful restraints and monopolies"; that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorneys of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and in the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section 5440 of the Revised Statutes of the United States, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack,
136 George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Roys-

ter, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the United States, to wit, to engage in a combination in restraint of commerce among the several States, namely, a combination in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, and did then and there so conspire to commit the aforesaid offense by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy; and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices; that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform non-competitive prices and should fail to make
137 sales and deliveries of such merchandise through itself and its subsidiary — amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation

defendants and firms which, through itself and its subsidiary companies, should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the same respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful combination was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that

138 such act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the

object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at
139 West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and

within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchan-
140 dise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee,

unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Man-
141 ager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec 6 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at

West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes and Bro.," at Oxford, Alabama, that certain letter of the date
142 set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley, By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did conspire to commit an offense against the United States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

ABRAM M. TILLMAN,
United States Attorney.

(Endorsed as follows:) No. 963. United States Circuit Court, Middle District of Tennessee. *The United States vs. Virginia-Carolina Chemical Company et als.*

Indictment for violating Act of Congress approved July 2, 1890, and entitled "An Act to Protect Trade and Commerce against unlawful restraints and monopolies," and Section 5440 R. S. U. S.

A True Bill. Robert Q. Stewart, Foreman of the Grand Jury.

Names of Witnesses Sworn and Examined Before the Grand Jury.

J. C. Adams, Henry E. Ahern, Lee Ashcraft, Eugene Atkinson, N. E. Barker, W. F. Barrett, James C. Beck, J. M. Berry, W. W. Bird, L. W. Botts, Clarence Braden, S. D. Bramlitt, A. P. Brantley, B. D. Brantley, Dewitt Brown, H. C. Brown, Arthur Bussey,
143 Hezekiah Bussey, E. J. Blume, James A. Boyd, William F. Burns, Oscar Bright, J. W. Carter, B. G. Clark, C. W. Comes, E. W. Connell, Charles Earle Currie, R. L. Davis, Joseph Denee, W. P. Diehl, A. M. Dobbs, John V. Dobson, C. H. Drayton, W. L. Dumas, J. B. Duncan, S. Eastland, T. B. Edwards, Culpepper Exum, H. C. Fischer, J. B. Fiser, Albert French, C. A. Gambrill, A. H. George, John E. Gibbs, William Gilchrist, James M. Gildsmith, A. A. Green, E. P. Grice, W. A. Hansell, G. A. Harrington, H. J.

Harby, Allen Hardison, L. C. Hayne, J. L. Haynes, D. P. Haynes, R. W. Henderson, P. W. Hendricks, E. R. Hodgson, junior, E. R. Hodgson, senior, J. L. Horn, W. E. Hudson, T. J. Hunt, R. H. Johnston, T. V. Kessler, E. M. Kirk, Henry Kirn, H. L. Law, Alexander Leslie, J. A. Lindsey, W. Hampton Logan, Harry Luck, John A. Lewis, W. F. McKenzie, Robert F. Maddox, H. W. Malloy, E. R. Manning, H. L. Milligan, J. Allen Moore, M. B. Neece, W. J. Oliver, E. Thomas Orgain, D. B. Osborne, Every M. Paget, W. W. Perkins, Dr. J. D. Plunkett, F. B. Pope, William Price, Charles Rainey, Frederick Rayfield, Isaac W. Read, W. A. Reynolds, I. T. Rhea, W. E. Richards, H. A. Rogers, V. N. Roadstrum, W. G. Sadler, G. W. Sanders, E. M. Sentelle, W. McR. Smith, R. G. Sparrow, J. F. Stackley, C. A. Steifelmeyer, S. E. Stewart, W. B. Stratford, John Sutterer, E. R. Taber, Frank E. Taylor, W. B. Taylor, W. D. Tharin, J. R. Timmerman, J. W. Todd, S. W. Travers, George H. Tucker, E. Van Winkle, J. T. Welch, O. C. Wiley, C. H. Willcox, T. B. Williams, Benjamin L. Willingham, W. S. Wight, E. G. Woodling.

Filed 11:30 A. M., May 25, 1906. H. M. Doak, Clerk, by E. L. Doak, Deputy Clerk. Abram M. Tillman, U. S. Atty.

I, H. M. Doak, Clerk of the Circuit Court of the United States in and for the Middle District of Tennessee, hereby certify that the foregoing is a true, perfect, and complete copy of an indictment filed as thereupon endorsed, etc. In witness whereof I have hereunto signed my name and affixed the seal of said court, at my office, this the 26th day of May, 1906.

[SEAL OF COURT.] H. M. DOAK, *Clerk.*

144 *Warrant.*

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

To the Marshal of the Eastern District of Virginia, Greeting:

Whereas complaint in writing, on oath, has been made to me charging that James G. Tinsley of Richmond, Va., stands indicted by the grand jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said James G. Tinsley on the eighth day of July, in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, did in the Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said James G. Tinsley did unlawfully conspire with divers other persons and corporations to commit

an offense against the United States, to-wit, the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States; and application has been made to me that the said James G. Tinsley may be arrested and imprisoned and removed or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee;

145 Now therefore, you are hereby commanded to arrest the said James G. Tinsley if he be found within your said District, and bring him forthwith before me at my Chambers in Richmond, in order that he may be dealt with according to law.

EDMUND WADDILL JR.,
U. S. District Judge.

Richmond, July 10, 1906.

Marshal's Return.

Pursuant to the within writ, I have taken the defendant James G. Tinsley into custody and now have him before Hon. Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia.

MORGAN TREAT,
United States Marshal.

July 10, 1906.

Conclusions of the Court.

Filed July 11th, 1906.

THE UNITED STATES
vs.
JAMES G. TINSLEY.

146 The conclusion reached by the Court is that in a proceeding for the arrest and removal of persons charged with a violation of the laws of the United States pursuant to section 1014 of the Revised Statutes of the United States, before a United States District Judge sitting in the State of Virginia, in which State there no longer exists the right of a preliminary examination upon a criminal charge prior to the trial upon the merits, when such Judge is called upon to act as well in the matter of the apprehension of such persons, as in their removal to the jurisdiction in which they have been indicted, that upon the government's presentation of a sufficient indictment regularly found by a grand jury in a court of the United States, properly charging the commission of an offense within the district in which such indictment is found, coupled with proof of the identity of the person indicted, it is its duty to properly bail such person for appearance before the Court in which he is indicted, or cause him to be removed thereto.

Order Allowing Bail.

Filed July 11th, 1906.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The within named James G. Tinsley having been brought before me, and identified; and it appearing by a duly authenticated copy of an indictment that he stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled "The United States *vs.* Virginia-
147 Carolina Chemical Company *et al.,*" for violation of section one of the act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States, it is ordered that the said James G. Tinsley give bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial before said Court under the said indictment, or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee, to be there dealt with according to law.

EDMUND WADDILL, JR.,
U. S. District Judge for the
Eastern District of Virginia.

Richmond, Va., July 11", 1906.

Warrant of Imprisonment and Removal.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The President of the United States to the United States Marshal of the Eastern District of Virginia, Greeting:

Whereas it has been made to appear that James G. Tinsley stands indicted in the Circuit Court of the United States for the
148 Middle District of Tennessee in cause No. 963 in said Court entitled: "The United States *vs.* Virginia-Carolina Chemical Company *et al.,*" for violation of section one of the act of Congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States; and whereas the said James G. Tinsley having been brought before me, and identified; and a certified copy of said indictment furnishing probable cause to believe him to be guilty as therein charged, and whereas it was thereupon ordered by me that said defendant give bail in the sum of five thousand dollars with one or more sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial under said indictment, or that in de-

fault thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee to be there dealt with according to law; and the said defendant having failed and refused to give bail as required, therefore:

You are hereby commanded in the name and by the authority of the said United States to imprison the said James G. Tinsley in accordance with law, and that with all convenient speed you remove him hence to the said Middle District of Tennessee and there surrender him to the Marshal of that District, there to be dealt with according to law.

EDMUND WADDILL, JR.,
U. S. District Judge for the
Eastern District of Virginia.

Richmond, Va., July 11, 1906.

Marshal's Return on Foregoing Warrant.

149 Executed July 11, 1906 by taking the within named defendant James G. Tinsley into custody, but before the order of removal was executed, a writ of *Habeas Corpus* was issued by order of the Circuit Court of the United States for the Eastern District of Virginia, sitting at Richmond, Virginia, commanding me to produce the body of the said James G. Tinsley before the said United States Circuit Court in the City of Richmond, Virginia, forthwith, and in pursuance of said writ of *Habeas Corpus*, I took the said James G. Tinsley before the United States Circuit Court as aforesaid, by which court said writ of *Habeas Corpus* was discharged and an appeal allowed to the said James G. Tinsley to the Supreme Court of the United States, pending which appeal the said James G. Tinsley was by order of said Court discharged from custody on bond conditioned for his appearance before said Circuit Court to abide such order as should be made by said Circuit Court upon return of the mandate of said Supreme Court of the United States upon determination of said appeal.

MORGAN TREAT,
United States Marshal.

Richmond, Virginia, July 11, 1906.

Statement of Proceedings and Order.

Filed July 11, 1906.

THE UNITED STATES OF AMERICA, *Eastern District of Virginia:*

THE UNITED STATES
vs.
J. G. TINSLEY.

150 This is an application under the provisions of Section 1014 of the United States Revised Statutes for a warrant

for the removal of J. G. Tinsley to the Middle District of Tennessee and comes before me as follows:—

The District Attorney for this District, together with Mr. E. T. Sanford, Counsel for the United States, presented to me a verified complaint of Morgan Treat, United States Marshal for this District, with the certified copy of an Indictment filed on May 25th, 1906, in the Circuit Court of the United States for the Middle District of Tennessee in the case of the United States *vs.* Virginia-Carolina Chemical Company and other defendants, including among such defendants the said J. G. Tinsley.

Said complaint and copy of said indictment are made parts of this order. Upon the exhibition of this Indictment and affidavit and the *ex parte* motion of the counsel for the United States I made an order for the arrest of said J. G. Tinsley and his production before me.

This order was duly executed by the said Marshal, who arrested the said J. G. Tinsley and brought him before me in Richmond on this 10th day of July, 1906, as shown by his return. When the accused was so brought before me it was moved by the counsel for the United States that inasmuch as the indictment charged offenses against the United States triable in the Circuit Court of said United States for the Middle District of Tennessee, and the identity of the defendant was admitted, that an order be forthwith made for the commitment of said J. G. Tinsley for trial before said Circuit Court.

This motion was made upon the certified copy of the Indictment without any further testimony, the identity of the party arrested and brought before me with the J. G. Tinsley mentioned in the Indictment being admitted.

151 And thereupon the defendant, J. G. Tinsley, offered himself as witness in his own behalf, and being about to be sworn, the United States, by its counsel, thereupon objected to the witness being sworn or to any testimony being given in rebuttal of the Indictment in these proceedings, on the ground that the identity of the defendant being admitted, inasmuch as the indictment on its face charges offenses against the United States committed and triable in the jurisdiction in which the defendant stands indicted, no evidence is admissible here to impeach the indictment, and the order of commitment should be made without other proof.

The defendant's counsel thereupon offered to prove by the defendant and other witnesses then and there present, that the Circuit Court for the Middle District of Tennessee had no jurisdiction over the person of said defendant touching the offenses charged in said indictment, in that defendant and said other witnesses would, if permitted, testify that defendant is, and has been for many years, a resident and citizen of the City of Richmond, State of Virginia, and that defendant never at any time, or at any place in the State of Tennessee, at the times charged in the Indictment, did or performed, or was party to, or engaged in any act or thing in the said Indictment charged as having been done and performed in any way whatsoever by this defendant in the said State of Tennessee; Nor has defendant done, or performed, or been engaged in, or a party

to the same or any of them in any other place or places at any other time or times whatsoever.

Thereupon counsel for the Government renewed its objections as aforesaid.

After hearing counsel on both sides, the Court announced its conclusions as follows:—

"The conclusion reached by the Court is that in a proceeding for the arrest and the removal of persons charged with a
152 violation of the laws of the United States pursuant to section 1014 of the Revised Statutes of the United States, before a United States District Judge, sitting in the State of Virginia, in which State there no longer exists the right of a preliminary examination upon a crime charged prior to the trial upon the merits, when said Judge is called upon to act as well in the matter of the apprehension of such persons, as in their removal to the jurisdiction in which they have been indicted, that upon the government's presentation of a sufficient indictment regularly found by a grand jury in a court of the United States, properly charging the commission of an offense within the district in which such indictment is found, coupled with proof of the identity of the person indicted, it is its duty to properly bail such person for appearance before the court in which he is indicted, or cause him to be removed thereto."

Therefore, it was ordered that the testimony offered is inadmissible, and will not be received, and I therefore made the following order.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The within named James G. Tinsley having been brought before me, and identified; and it appearing by a duly authenticated copy of an indictment that he stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al,*" for violation of section one of the act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies"
153 and for violation of section 5440 of the Revised Statutes of the United States, it is ordered that the said James G. Tinsley give bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial before said Court under the said indictment; or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee, to be there dealt with according to law.

Richmond, Va., July 11", 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

And after said order had been made and the defendant declined to give bond, the Counsel for the United States moved that the warrant do issue directed to the Marshal of this District for the imprison-

ment and removal of the said J. C. Tinsley to the said Middle District of Tennessee and his delivery to the custody of the United States Marshal of the district.

On such motion Counsel for the said J. G. Tinsley objected and again offered the said J. G. Tinsley as a witness, together with the other witnesses here-before referred to, to establish the same matters and facts as hereinbefore stated with regard to the objection to the order for the commitment of the said J. G. Tinsley, which testimony was again offered and was again objected to by the counsel for the United States on the same grounds as above set forth, and on the further ground that these matters could not now be inquired of in this stage of the proceedings, and was again excluded by the
154 court, to all of which counsel for the said J. G. Tinsley duly excepted and had the exceptions noted and entered.

I therefore issued a warrant directed to the Marshal as follows:
Richmond, Va., July 11", 1906.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

Warrant of Imprisonment and Removal.

UNITED STATES OF AMERICA, *Eastern District of Virginia, set:*

The President of the United States to the United States Marshal of the Eastern District of Virginia, Greeting:

Whereas it has been made to appear that James G. Tinsley stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled: "The United States *vs.* Virginia-Carolina Chemical Company *et al.,*" for violation of section one of the act of Congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States; and whereas the said James G. Tinsley having been brought before me, and identified; and a certified copy of said indictment furnishing probable cause to believe him to be guilty as therein charged, and whereas it was thereupon ordered by me that said defendant give bail in the sum of five thousand dollars with one or more sureties for his appearance before the said
155 Circuit Court of the United States for the Middle District of Tennessee for trial under said indictment, or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee to be there dealt with according to law; and the said defendant having failed and refused to give bail as required, therefore;

You are hereby commanded in the name and by the authority of the said United States to imprison the said James G. Tinsley in accordance with law, and that with all convenient speed you remove him hence to the said Middle District of Tennessee and there sur-

rended him to the Marshal of that District, there to be dealt with according to law.

Richmond, Va., July 11, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

Richmond, Va., July 11, 1906.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

Certificate of Clerk.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

I, G. E. Bowden, Clerk of the District Court of the United States for the Eastern District of Virginia, do hereby certify that the foregoing is a full and true transcript of the record and proceedings in the therein entitled cause made in obedience to the direction in the return of the Honorable Edmund Waddill, Jr., Judge of said
156 Court to the writ of certiorari, attached to and made a part of said record.

In witness whereof, I have hereunto set my hand and affixed the seal of the said District Court, at the City of Richmond, this 11th day of July, A. D., 1906.

[Seal United States District Court.]

G. E. BOWDEN,
Clerk United States District Court,
By JOSEPH P. BRADY,
Deputy Clerk U. S. District Court.

Certificate of United States District Judge.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

I, Edmund Waddill, Jr., Judge of the District Court of the United States for the Eastern District of Virginia do hereby certify that the foregoing is a full and true transcript of the record and proceedings had before me in the therein entitled cause.

In witness whereof, I hereunto set my hand and seal of said Court at Richmond, this 18th day of July, A. D., 1906.

[Seal United States District Court.]

EDMUND WADDILL, JR.,
United States District Judge.

157 *Conclusions of the Court.*

Filed July 14th, 1906.

In the United States Circuit Court for the Eastern District of Virginia.

In the Matter of the Petition of JAMES G. TINSLEY for Writs of *Habeas Corpus* and Certiorari.

JAMES G. TINSLEY, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

Petitioner alleges that he is unlawfully deprived of his liberty. He prays that by virtue of the writ of *Habeas Corpus*, he may be discharged from custody. I find from the petition, from its exhibits, and from respondents' reply that petitioner has been committed to the Marshal of the Eastern District of Virginia by an order of the United States District Judge of that District, with directions to remove petitioner to the Middle District of Tennessee, in order that he may be there tried on an indictment in which he with others, is charged with a violation of the laws of the United States. The proceedings so resulting were conducted under the provisions of section 1014 of the Revised Statutes of the United States. The Judge so hearing the matter, and so issuing said order of removal, acted in conformity with like proceedings, as provided for in criminal actions in the state of Virginia, in which state petitioner resides, and where the application for his removal was made.

158 On the hearing of this petition, I am asked to permit petitioner to offer testimony, the object of which is to show that probable cause does not exist as to petitioner's guilt of the offense of which he is charged; that he was not within the limits of the jurisdiction of the Middle District of Tennessee when said offense is alleged to have been committed; and testimony tending to show that he is innocent of the charge alleged in the indictment returned against him. Petitioner insists that he should not be removed to said Middle District of Tennessee for trial, but should be discharged from arrest. Should I, on this hearing, permit such testimony? I find from the record before me, that the indictment charges conspiracy; that it is alleged therein that petitioner with others, did in the Middle District of Tennessee, conspire to commit an offense against the laws of the United States. The indictment, in my judgment, sufficiently sets forth such offense. I find that it is in due form, and that it charges a crime; that it alleges a conspiracy such as is prohibited by the laws of the United States; and that an overt act, as described in the statute is charged as having been taken

place in the Middle District of Tennessee. Such being the charge, I am of the opinion, under the law applicable thereto, that the personal presence of petitioner in said jurisdiction was not essential; and that he can be lawfully proceeded against in that district; and if the allegations set out in the indictment are sustained by competent evidence, that a conviction there can be upheld.

If such be the case, does it not follow that the testimony offered by the petitioner is immaterial? The indictment charges the commission of a crime; alleges that the petitioner with others committed it; and the laws authorizes his conviction in the district to which he has been ordered removed, if an overt act in pursuance of
159 said conspiracy was committed there. Technical objections to said indictment should not be considered by me on this hearing; they should only be heard by the court in which the indictment was returned.

While it is true that the order to remove for trial should only be issued in cases where probable cause has been shown, it is equally true that a certified copy of the indictment, with proof of the identity of the party accused, has been in a number of well considered cases, held to establish probable cause, and to authorize the warrant of removal. It must be conceded that the authorities are conflicting; but to my mind the path we should follow has been plainly indicated by the opinions of that great tribunal, whose mandates we all obey, whose judgments are the supreme law of the land. In Beavers *v.* Hanckel, 194 U. S., 73, the case rested on the efficacy of the indictment; for no other evidence of guilt was offered. The indictment was held to be *prima facie* evidence of the existence of probable cause. It satisfied the requirements of the constitution, and the laws made thereunder. Why should not the indictment in the case we now have under consideration serve the same purpose? The testimony tendered is, as I understand this case, immaterial, and the identity of the accused is admitted. His guilt or innocence is not to be ascertained by testimony offered in this jurisdiction, in connection with questions involved in the proceedings relating to the warrant of removal, or this writ of *habeas corpus*. That matter must go to the jury impaneled by the court in which the indictment was returned. To hold otherwise would result in inextricable confusion, and to discharge the petitioner on the showing now made, would tend to impede the due administration of justice; and can
160 only be done, in my opinion, by a strained construction of the statutes.

The writ will be dismissed, and petitioner will be remanded to the custody of the Marshal.

NATHAN GOFF,
U. S. Circuit Judge.

July 14th, 1906.

Order Dismissing Petition and Discharging Writ of Habeas Corpus and Allowing Appeal.

Filed July 14th, 1906.

In the Circuit Court of the United States for the Eastern District of Virginia.

In the Matter of the Petition of JAMES G. TINSLEY for Writs of *Habeas Corpus* and Certiorari.

JAMES G. TINSLEY, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

This cause was on this, the 14th day of July, 1906, heard before the Honorable, the Circuit Court of the United States for the Eastern District of Virginia, the Honorable Nathan Goff, Circuit Court Judge, presiding, upon the petition of said James G. Tins-
161 ley in this cause and the return of the Marshal, the defendant, thereto, and the return of the District Judge of the Eastern District of Virginia (by agreement the copy of the findings and order of said District Judge being here now taken as his return to said writ of certiorari, and the motion of the petitioner, by his counsel, hereinafter mentioned.

The petition and the return of the Marshal thereto were read, and thereupon the petitioner presented himself as a witness and his counsel moved the Court that he be sworn in order to testify as such, and as such witness to prove the facts averred and set forth in said petition, which facts were then and there repeated and restated to the Court; and his counsel then also stated that the said witness, and other persons then present as witnesses, would testify and prove that the said facts set forth and averred in the petition and exhibits, and repeated by him to the Court, were true.

Thereupon the Honorable Edward T. Sanford, Special Counsel representing the United States, and also the defendant Marshal, objected to the swearing of the said petitioner as a witness and also to the admission of said evidence, upon the ground that said evidence was immaterial and irrelevant, and that it was not allowable to contradict or transverse by evidence in this Court the averments of the indictment which had been found against the petitioner in the Circuit Court of the United States for the Middle District of Tennessee, and that there was no error in the action of the District Judge. The objection so made was sustained, and the witness not allowed to be sworn nor allowed to testify to the facts above stated, to which action of the Court the petitioner then and there excepted.

162 Thereupon it was ordered and adjudged by the said Court that the petition be dismissed and the writ of *habeas corpus* heretofore issued in this cause upon the said petition be and the same is hereby dismissed and discharged; and that the said James G. Tinsley be remanded to the custody of said Morgan Treat, U. S. Marshal, for the Eastern District of Virginia, to be dealt with by him according to the directions of the writ of the process under which he had custody of the said James G. Tinsley.

Thereupon, the petitioner presented his petition, setting forth that he was aggrieved by the said order dismissing the said writ of *habeas corpus,* and praying that he be allowed to prosecute an appeal from said final order or judgment, to the Supreme Court of the United States under and according to the law of the United States in that behalf made together with his assignment of error in that behalf which appeal is allowed; and the petitioner having been allowed and the said appeal being hereby granted, the petitioner, by his counsel, thereupon moved the Court that he be enlarged or admitted to bail pending the decision of his said case upon said appeal; and thereupon it was accordingly ordered that the said petitioner and appellant be, and he is hereby enlarged upon his bond and admitted to bail, pending the said appeal to the Supreme Court of the United States; said bond to be in the penal sum of $5,000.00, to be taken and approved by the Clerk of this Court and conditioned for the said petitioner and appellant to appear before this Court to abide such order as shall be made by this Court upon the mandate of the Supreme Court of the United States upon the determination of petitioner's said appeal; and upon the execution by the said James G. Tinsley of such bond, with surety or sureties, to be approved by the Clerk of this Court, he will be enlarged and admitted to bail. The Clerk will take as surety any satis-

163 factory guaranty company.

The opinion of the Court in dismissing the petition and discharging the writ of *habeas corpus* is made part of the record herein and will be copied by the Clerk in the transcript on appeal.

NATHAN GOFF,
U. S. Circuit Judge.

July 14, 1906.

Appearance Bond.

Filed July 14th, 1906.

In the Circuit Court of the United States for the Eastern District of Virginia.

In the Matter of the Petition of JAMES G. TINSLEY for Writs of *Habeas Corpus* and Certiorari.

JAMES G. TINSLEY, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

We as principal, the American Surety Company of New York a guaranty and surety company, organized and existing under the laws of the State of New York, with power and authority to become surety for principals in appearance bonds, jointly and severally acknowledge ourselves to owe and to be bound to the United States of America in the penal sum of Five Thousand Dollars ($5,000.00), severally to be made and levied of our goods, chattels, lands and tenements, if default be made herein.

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The condition of this obligation is as follows: Whereas the said James G. Tinsley, being detained in the custody of Morgan Treat, United States Marshal for the Eastern District of Virginia, under commitment and warrant of removal to the Circuit Court of the United States for the Middle District of Tennessee, granted by the Honorable Edmund Waddill, Jr., Judge of the District Court for the Eastern District of Virginia, presented his petition for and sued out a writ of *habeas corpus* from the Circuit Court of the United States for the Eastern District of Virginia, and the said writ of *habeas corpus* duly issued to the said Treat, Marshal, and he made his return thereto; and the said matter of *habeas corpus* came on for hearing before the said Circuit Court of the United States for the Eastern District of Virginia, on the 14th day of July, 1906, when by order thereof the said petition was dismissed and the said writ of *habeas corpus* discharged, and the said James G. Tinsley remanded to the custody of the said Morgan Treat, Marshal, to be proceeded with as provided by law; and

Whereas, from the said final order dismissing the said petition and writ of *habeas corpus,* the said James G. Tinsley prayed an appeal to the Supreme Court of the United States, which was granted and said appeal perfected; and

Whereas, the said Circuit Court of the United States allow- said appeal, ordered that pending said appeal the said James G. Tinsley upon the execution of a bond in the penal sum of Five Thousand Dollars ($5,000.00), conditioned as by said order was provided, might be enlarged and admitted to bail;

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Now, therefore, in compliance therewith, and in order to be so enlarged, the said James G. Tinsley as principal, and the said American Surety Company of New York, as surety, execute this bond upon the condition that, if the said James G. Tinsley shall duly personally appear in and before the Circuit Court of the United States for the Eastern District of Virginia, then and there to answer the exigency and determination of said appeal, and personally abide the final decision and determination of the said Supreme Court of the United States and of the said Circuit Court of the United States, upon the mandate of the said Supreme Court of the United States, and obey and abide the orders of said Circuit Court of the United States, and not depart without leave upon the conditions aforesaid, and upon the entry of said orders upon said appeal, then and in that event this bond or obligation shall be void; but otherwise it shall be and remain in full force and effect.

In witness whereof, the said James G. Tinsley as principal, and the said American Surety Company of New York as surety, the said surety being represented by and through Robert Le Masurier, its duly authorized agent and attorney, have hereunto on this the 14th day of July, 1906, set their hands.

[Seal of American Surety Company.]

JAMES G. TINSLEY. [SEAL.]
AMERICAN SURETY COMPANY OF NEW YORK,
By ROB'T LE MASURIER, *Agent.*

Signed, sealed and delivered in the presence of
JOSEPH P. BRADY, *Clerk.*

166 *Notice of Appeal.*

Filed July 14th, 1906.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of JAMES G. TINSLEY for Writs of *Habeas Corpus* and Certiorari.

JAMES G. TINSLEY, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia; JOSEPH P. BRADY, Deputy Clerk of the District Court of the United States for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

SIRS: Please take notice that James G. Tinsley petitioner above named hereby appeals to the Supreme Court of the United States from the final order made and entered on the 14th day of July, 1906,

by the Honorable Nathan Goff, Judge of the Circuit Court of the United States, Fourth Judicial Circuit of Virginia, discharging his application for writs of *habeas corpus* and certiorari and from each and every part of said order.

Dated at the City of Richmond, State of Virginia, on the 14th day of July, 1906.

Respectfully,

JOHN J. VERTRESS,
JAMES C. BRADFORD,
JOHN S. MILLER,
Attorneys for Petitioner and Appellant.

167 *Petition for Appeal.*

Filed July 14th, 1906.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of JAMES G. TINSLEY for Writs of *Habeas Corpus* and Certiorari.

JAMES G. TINSLEY, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

The petition of the above named petitioner James G. Tinsley for an order, allowing an appeal to the Supreme Court of the United States from the final order in the above styled cause, discharging the writs of *habeas corpus* and certiorari in this cause and remanding petitioner to the custody of the said Morgan Treat, United States Marshal.

James G. Tinsley, the petitioner and appellant above named, feeling himself, aggrieved by the final order heretofore made and entered by this Court in this cause on the 14th day of July, 1906, whereby it was ordered that his petition for a writ of *habeas corpus,* directed to said Morgan Treat, United States Marshal, in and for the said District of Virginia, and his writ of certiorari, directed to
168 Hon. Edmund Waddill, Jr., United States District Judge for said District, commanding him to return all the proceedings, warrants, depositions, examinations, commitments and record of all proceedings against your petitioner to the Circuit Court of the United States, were, after the same had been duly granted and return made thereon by this Honorable Court, discharged, and petitioner was by said order remanded to the custody of said Morgan Treat, United States Marshal, as aforesaid.

Now come, Jno. J. Vertress and Jas. C. Bradford, his attorneys and counsel, praying this court for an order allowing your petitioner

to prosecute an appeal from said final order of the United States Circuit Court to the Supreme Court of the United States, and according to the laws of the United States in that behalf made.

Your petitioner is advised by his counsel that in the proceedings referred to in the petition for writs of *habeas corpus* and certiorari, and the said order discharging the same have infringed the constitutional rights of your petitioner and that the commitment of your petitioner and the restraint of his person referred to in said petition and under said order is without authority of law and that the said United States District Judge acting as United States Commissioner, before whom your petitioner was arraigned, as set forth in said petition hereinbefore referred to had no jurisdiction to either require bail of petitioner or to commit petitioner in default thereof, and your petitioner desires in good faith to submit the constitutional questions and other questions involved to the Supreme Court of the United States for their determination.

And your petitioner will ever pray, etc.,

JOHN J. VERTRESS,
JAMES C. BRADFORD,
JOHN S. MILLER,
Attorneys for Petitioner and of Counsel.

169 UNITED STATES OF AMERICA, *Eastern District of Virginia:*

James G. Tinsley, being duly sworn on his oath, deposes and says that he is the petitioner above named, that the foregoing petition is true of his own knowledge, except as to those matters which are therein stated on his information and belief, and as to those matters, he believes them to be true.

Sworn to before me this 14th day of July, 1906.

JOSEPH P. BRADY,
Clerk of the United States Circuit Court,
Eastern District of Virginia.

Assignment of Errors.

Filed July 14th, 1906.

In the Supreme Court of the United States.

In the Matter of the Petition of JAMES G. TINSLEY for Writs of *Habeas Corpus* and Certiorari.

JAMES G. TINSLEY, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

170 The petitioner, James G. Tinsley, by John J. Vertress and Jas. C. Bradford and John S. Miller, his Counsel in connection

with his petition of appeal herein, entered herein, to the Supreme Court of the United States, from the final order made and entered in the United States Circuit Court of the Fourth Judicial Circuit in and for the Eastern District of Virginia, discharging the writs of *Habeas Corpus* and Certiorari and remanding petitioner to the custody of the said Morgan Treat, Marshal, and makes and files the following assignment of errors:—

1. The court erred in discharging the petitioner's writs of *Habeas Corpus* and Certiorari and remanding him to the custody of the United States Marshal.

2. In refusing to grant the prayer of said writs.

3. In refusing to discharge said petitioner.

4. In holding that the restraint of the petitioner's liberty is legal.

5. In holding that the restraint of your petitioner is not in violation of his substantial rights.

6. In holding that said alleged indictment or any count thereof stated an offence against the laws of the United States.

7. In holding that the alleged indictment, or any count thereof was sufficient upon which to base a warrant of removal.

8. In holding that there was sufficient evidence of probable cause.

9. In holding that the warrant of removal made by the United States District Judge for the Eastern District of Virginia was issued upon the finding of probable cause; and in not holding that said order & warrant of removal were unauthorized & void because said District Judge refused to receive or hear any evidence offered by petitioner.

10. In holding that the alleged indictment with proof of
171 identity was conclusive evidence of probable cause.

11. In holding that upon the introduction in evidence of the alleged indictment with proof of identity that the defendant, your petitioner, was not entitled to introduce evidence offered by him and in refusing to hear or receive evidence offered by him to show that the alleged offence, charged in said indictment and in each count thereof had not been committed by him in the State of Tennessee, in which state the indictment was found and in so holding, violating Article V and Article VI of the Amendments to the Constitution of the United States in that he was deprived of his liberty without due process of law.

12. In failing to hold that your petitioner is deprived of his liberty without due process of law in violation of Article V of the Amendments to the Constitution of the United States, in that said District Judge refused to hear or receive any evidence offered by your petitioner in that the complaint and evidence referred to herein, which were the sole authority for the petitioner's arrest and commitment as aforesaid failed to charge the petitioner with any crime against the laws of the United States.

13. In failing to hold that the petitioner's detention was in violation of Article V of the amendments to the Constitution of the United States in that the said United States District Judge, sitting as United States Commissioner and the United States District Judge has such jurisdiction to order the arrest and commitment of your

petitioner, and that your petitioner is held to answer for a crime without any sufficient or valid indictment of a grand jury.

14. In failing to hold that restraint of your petitioner is in violation of Article IV of the Amendments to the Constitution of the United States, because it appears from the indictment upon
172 which the warrant in this case was issued that it was wholly void.

15. In failing to hold the restraint of your petitioner is in violation of the privisions of Article IV of the amendments to the Constitution of the United States for the reasons particularly specified in his petition for a writ of *habeas corpus.*

16. In holding that a warrant of removal should issue for the reason that the proceedings conclusively show, by the indictment that the venue for the facts alleged in the indictment is not and was not in the Middle District of the State of Tennessee or in the State of Tennessee.

17. In failing to hold that the restraint of your petitioner is in violation of the provisions of Article VI of the amendments to the constitution of the United States for the reason that upon the proof offered to be made and rejected by the United States District Judge, sitting as a commissioner, and the United States District Judge and this Honorable Court, sitting upon the hearing of the petition of *habeas corpus,* and by the averments of said petition which were not controverted, it was conclusively shown that the offences charged in the indictment were not committed in the Middle District of the State of Tennessee or in the State of Tennessee, and that he could not be lawfully tried by a jury of the State of Tennessee and of the Middle District of Tennessee where said indictment was found.

18. In holding that the warrant of removal was properly issued, as the record and proceedings conclusively show that the alleged offence, complained of in the indictment and the several counts thereof, did not occur within the Middle District of the
173 State of Tennessee, or in the State of Tennessee, and that your petitioner did not conspire to commit any offence within the State of Tennessee, or in the Middle District thereof.

19. In holding that your petitioner was lawfully in the custody of said Morgan Treat, United States Marshal in and for the Eastern District of Virginia, and was lawfully deprived of his liberty by him by due process of law.

20. For other errors appearing on the record, by reason whereof, the petitioner prays that the said order, discharging said writs of *Habeas Corpus* and Certiorari be reversed and the petitioner discharged from custody.

JOHN J. VERTRESS,
JAMES C. BRADFORD,
JOHN S. MILLER,
Attorneys for Petitioner and Appellant.

Appeal Bond.

Filed July 14th, 1906.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of JAMES G. TINSLEY for Writs of *Habeas Corpus* and Certiorari.

JAMES G. TINSLEY, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

174 Know all men by these presents, that we, James G. Tinsley and William A. Moncure his surety, are held and firmly bound unto the United States of America, in the full and just sum of Five hundred dollars to be paid to the United States, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this 14th day of July, 1906.

Whereas, lately, to-wit; on the 14th day of July, 1906, at the Circuit Court of the United States, in and for the Fourth Judicial Circuit, Eastern District of Virginia, in a proceeding therein pending, an order was entered discharging the writs of *habeas corpus* and certiorari, of the above named petitioner in the above mentioned proceeding and said petitioner having duly obtained an appeal from the said order to the Supreme Court of the United States and filed a copy thereof in the Clerk's office of said Circuit Court to review the same,

Now, the Condition of the Above Obligation, is such, that if the said petitioner James G. Tinsley, shall prosecute said appeal to effect and shall answer all costs if he should fail to make said appeal good, then this obligation to be void; else to remain in full force and effect.

JAMES G. TINSLEY. [SEAL.]
WILLIAM A. MONCURE. [SEAL.]

Sealed, and delivered, and taken and acknowledged, this 14th day of July, 1906, before me,

JOSEPH P. BRADY, *Clerk.*

UNITED STATES OF AMERICA,
Eastern District of Virginia, To wit:

175 William A. Moncure being duly sworn says that he is worth more than the sum of Five Hundred Dollars, over and above all his just debts and liabilities.

Sworn to before me this 14th day of July, 1906.

JOSEPH P. BRADY, *Clerk.*

Citation.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of JAMES G. TINSLEY for Writs of *Habeas Corpus* and Certiorari.

JAMES G. TINSLEY, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia; JOS. P. BRADY, Deputy Clerk of the District Court of the United States for the Eastern District of Virginia; and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Judge L. L. Lewis, United States District Attorney for the Eastern District of Virginia, Jos. P. Brady, Clerk of the United States Circuit Court for the Eastern District of Virginia, Morgan Treat, United States Marshal in and for the Eastern District of Virginia; Hon. Edmund
176 Waddill, Jr., United States District Judge for the Eastern District of Virginia, and Jos. P. Brady, Deputy Clerk of the United States District Court for the Eastern District of Virginia:

You are cited and admonished to be and appear at the Supreme Court of the United States at the City of Washington, within thirty days from the date of this writ, pursuant to an appeal duly allowed by the Circuit Court for the Fourth Judicial Circuit, Eastern District of Virginia and filed in the Clerk's Office of said Court on the 14th day of July, 1906, in the cause entitled, in the matter of the petition of James B. Tinsley for writs of *habeas corpus* and certiorari, James G. Tinsley, appellant, *versus*, Morgan Treat, United States Marshal in and for the Eastern District of Virginia, Jos. P. Brady, Deputy Clerk of the District Court of the United States in and for said Eastern District of Virginia, and Hon. Edmund Waddill, Jr., United States District Judge in and for said Eastern District of Virginia, Appellees, to show cause, if any, why the final order of said Circuit Court, rendered against the appellant, as in

said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Hon. Nathan Goff, Judge of the United States Circuit Court, this 14th day of July, A. D., 1906.

NATHAN GOFF,
Judge of the Circuit Court
of the United States.

Acceptance of Service by United States District Judge.

Legal service of the within Citation is hereby acknowledged this 21st — July, 1906.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

177 *Marshal's Return.*

Executed this 23rd day of July 1906, by delivering in person in the City of Richmond, Va., a true copy of the within citation to the following named persons viz: L. L. Lewis United States District Attorney for the Eastern District of Virginia, Joseph P. Brady Clerk of the United States Circuit Court for the Eastern District of Virginia, Joseph P. Brady Deputy Clerk of the United States District Court for the Eastern District of Virginia.

MORGAN TREAT,
United States Marshal.

Further executed this 23rd day of July 1906, by delivering in person in the City of Richmond, Va. to Morgan Treat United States Marshal for the Eastern District of Virginia, a true copy of this citation.

MORGAN TREAT,
United States Marshal,
By M. J. ENRIGHT,
Office Deputy Marshal.

178 *Order Transmitting Record.*

And thereupon, it is ordered by the Court here that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the Supreme Court of the United States of America, and the same is transmitted accordingly.

Teste:

JOSEPH P. BRADY,
Clerk United States Circuit Court.

Clerk's Certificate.

THE UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

I, Joseph P. Brady, Clerk of the Circuit Court of the United States for the Eastern District of Virginia, do hereby certify that the foregoing is a full and true transcript of the record and proceedings of the said Circuit Court, together with all things thereunto relating, in the therein entitled cause.

In testimony whereof, I hereunto set my hand and affix the seal of the said Circuit Court of the United States for the Eastern District of Virginia, at Richmond, this 10th day of August, A. D., 1906.

[Seal United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Endorsed on cover: File No. 20,334. E. Virginia C. C. U. S. Term No. 369. James G. Tinsley, appellant, *vs.* Morgan Treat, United States marshal in and for the eastern district of Virginia *et al.* Filed August 14, 1906. File No. 20,334.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 370.

WILLIAM DE C. KESSLER, APPELLANT,

vs.

MORGAN TREAT, UNITED STATES MARSHAL IN AND FOR THE EASTERN DISTRICT OF VIRGINIA, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

FILED AUGUST 14, 1906.

(20,335.)

(20,335.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 370.

WILLIAM De C. KESSLER, APPELLANT,

vs.

MORGAN TREAT, UNITED STATES MARSHAL IN AND FOR THE EASTERN DISTRICT OF VIRGINIA, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 10, 1906.

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a In the Supreme Court of the United States.

In re Petition of WILLIAM DEC. KESSLER for Writs of *Habeas Corpus* and Certiorari.

WM. DEC. KESSLER, Appellant,

vs.

MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia; Jos. P. BRADY, Deputy Clerk of the District Court of the United States for the Eastern District of Virginia, and Hon. EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Judge L. L. Lewis, United States District Attorney for the eastern District of Virginia, Jos. P. Brady, Clerk of the United States Circuit Court for the eastern district of Virginia, Morgan Treat, United States Marshal in and for the eastern District of Virginia; Hon. Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia, and Jos. P. Brady, Deputy Clerk of the United States District Court for the eastern District of Virginia:

You are cited and admonished to be and appear at the Supreme Court of the United States at the City of Washington, within thirty days from the date of this writ, pursuant to an appeal duly allowed by the Circuit Court for the Fourth Judicial Circuit, Eastern District of Virginia and filed in the Clerk's Office of said Court on the 14th day of July, 1906, in the cause entitled, in the matter of the
b petition of William DeC. Kessler for writs of *habeas corpus* and certiorari, William DeC. Kessler, appellant, *versus* Morgan Treat, United States Marshal, in and for the eastern District of Virginia, Jos. P. Brady, Deputy Clerk of the District Court of the United States in and for the said eastern District of Virginia, and Hon. Edmund Waddill, Jr., United States District Judge, in and for said Eastern District of Virginia, Appellees, to show cause, if any, why the final order of said Circuit Court, rendered against the appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Hon. Nathan Goff, Judge of the United States Circuit Court, this 14th day of July, A. D., 1906.

NATHAN GOFF,
Judge of the Circuit Court of the United States.

c Legal service of the within citation is hereby acknowledged this 21st July, 1906.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

Executed this 23rd day of July, 1906, by delivering in person in the City of Richmond, Va., a true copy of the within citation to the following named persons viz: L. L. Lewis United States District Attorney for the Eastern District of Virginia, Joseph P. Brady Clerk of the United States Circuit Court for the Eastern District of Virginia, Joseph P. Brady Deputy Clerk of the United States District Court for the Eastern District of Virginia.

MORGAN TREAT,
United States Marshal.

Marshal's Fees for service $6.00.

Further executed this 23rd day of July 1906, by delivering in person in the City of Richmond Va. to Morgan Treat United States Marshal for the Eastern District of Virginia, a true copy of the within citation.

MORGAN TREAT,
United States Marshal,
By M. J. ENRIGHT,
Office Deputy Marshal.

Marshal's Fees for service, $2.00.

d [Endorsed:] No. —. Circuit Court of the U. S., Eastern District of Virginia. In the Matter of the Petition of William DeC. Kessler for Writs of *Habeas Corpus* and Certiorari. William DeC. Kessler, Appellant, *vs.* Morgan Treat, United States Marshal, &c., *et als.*, Appellees. Citation. Filed this 14th day of July, 1906. Joseph P. Brady, Clerk.

1 *Transcript of Record.*

THE UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

At a Circuit Court of the United States for the Eastern District of Virginia, begun and held at the Court Rooms in the Custom House, in the City of Richmond, Virginia, on the first Monday in April, being the second day of the same month, in the year of our Lord one thousand, nine hundred and six.

Present: The Honorable Nathan Goff, Judge of the Circuit Court of the United States for the Eastern District of Virginia.

Among other were the following proceedings, to-wit:

In the Matter of the Petition of WILLIAM DEC. KESSLER for Writs of *Habeas Corpus* and Certiorari.

WILLIAM DEC. KESSLER, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

2 *Petition for Writs of Habeas Corpus and Certiorari.*

Filed July 14, 1906.

In the District Court of the United States for the Eastern District of Virginia.

In the Matter of the Petition of WILLIAM DEC. KESSLER for Writs of *Habeas Corpus* and Certiorari.

WILLIAM DEC. KESSLER, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

To the Honorable the Judges of the Circuit Court of the United States for the Eastern District of Virginia:

The Petition and Complaint of William DeC. Kessler respectfully shows to the Court:

1.

That your Petitioner is a citizen of the United States, and is a citizen and resident of Pensacola in the State of Florida and is unlawfully imprisoned and restrained of his liberty by Morgan Treat, United States Marshal for the Eastern District of Virginia, in the City of Richmond, and County of Henrico, in said District.
3 That your petitioner is held by said Marshal under color and claim of authority of the United States, by virtue of a warrant for removal claimed to have been issued under section 1014 of the Revised Statutes of the United States, dated July 14, 1906, signed by the Honorable Edmund Waddill, Jr., Judge of the District Court of the United States for the Eastern District of Virginia, and has been committed and is detained only under and by virtue of said warrant, and not by virtue of any judgment, decree or final order of any court.

2.

On the 14th day of July, 1906, at the said City of Richmond, in said District, complaint in writing signed and sworn to by Morgan Treat, United States Marshal in and for said District, a copy of

which is hereto attached, marked "Exhibit A," and made part hereof, was presented to the Honorable Edmund Waddill, Jr., Judge of the District Court of the United States for the said District, in and by which it was averred that he, the said Morgan Treat, United States Marshal, had good cause to believe and did believe that your petitioner Wm. DeC. Kessler of Pensacola, Florida, has been indicted by the grand jury of the Circuit Court of the United States in and for the Middle District of Tennessee, for that your petitioner on the 8th day of July, 1903, and during the period of time from that date until and on the first day of September, 1905, and being during that period Treasurer of the Goulding Fertilizer Company a corporation existing under the laws of Great Britain & Ireland did, in said Middle District of Tennessee, unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section 1 of the Act of Congress
4 approved July 2, 1890, entitled "An Act to protect trade and commerce against restraints and monopolies," and that on the 8th day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, your petitioner did unlawfully conspire with divers other persons and corporations to commit an offense against the United States, to-wit: The offense of engaging in a combination in restraint of trade and commerce among the several States of the United States, all as more fully set out in an indictment filed in said Circuit Court of the United States in and for the Middle District of Tennessee on May 25th, 1906, a certified copy of which indictment said complaint states was thereto attached and made a part of said complaint, and in and by which said complaint, said complainant did, therefore, charge that your petitioner did commit the said offense against the United States in the manner and form as set forth in said indictment, and did furthermore aver in said complaint upon information and belief, that your petitioner is now believed to be within the Eastern District of Virginia.

And said complainant, said Morgan Treat, United States Marshal, in and by said complaint did therefore pray that your petitioner might be arrested, imprisoned, and removed or bailed, as the case might be, for trial before said Circuit Court of the United States for the Middle District of Tennessee, and further dealt with according to law; all of which will appear from the said complaint, a copy of which is hereto attached as aforesaid, reference thereto being hereby made for greater certainty. And that thereupon, to-wit, on
5 the said 14th day of July, 1906, a warrant for his arrest was issued by the Honorable Edmund Waddill, Jr., Judge as aforesaid, upon the aforesaid complaint, which came to the hands of the said Morgan Treat, Marshal as aforesaid, and he, in obedience thereto, arrested your petitioner and brought him before the said Honorable Edmund Waddill, Jr., Judge as aforesaid, and made return of said warrant, endorsed thereon, and a copy of said warrant with the endorsement thereon is hereto attached marked "Exhibit B" and made a part hereof.

3.

That thereupon then and there, the United States Attorney in and for the said Eastern District of Virginia, for and on behalf of the United States, did offer and introduce in evidence to and before the said Judge, in support of the averments of the said complaint of said Morgan Treat, United States Marshal, a certified copy of the said indictment mentioned and referred to in the said complaint. A certified copy of said indictment so offered and introduced in evidence is hereto attached, marked "Exhibit C," and made a part hereof, and the identity of your petitioner with and as the Treasurer of the Goulding Fertilizer Co. mentioned and referred to in said indictment as one of the defendants therein, having been then and there admitted by your petitioner, the Government, the United States of America, introduced or offered no other or further proof or evidence in support of the said complaint or of the averments therein; but rested its case upon the said hearing of the said complaint before the said Judge.

4.

That thereupon, then and there, your petitioner, by his counsel, proceeded to offer, and offered, proof and evidence to show
6 that your petitioner did not within the said Middle District of Tennessee, on the 8th day of July, 1903, or during the period between the 8th day of July, 1903, and the 1st day of September, 1905, or at any other time, engage in the said alleged conspiracies in the said indictment mentioned, or any or either of them, or at any time or at any place, join in or assent to the said alleged conspiracies engaged in or entered upon in said Middle District of Tennessee, or any or either of them, or at any time or at any place do any act in furtherance of, or to effect the object of said alleged conspiracies engaged in in said Middle District of Tennessee, or any or either of them. Thereupon, then and there, the Counsel for the Government, upon the said hearing, did object to the introduction on the behalf of your petitioner of the said evidence or any evidence or proof tending to contradict or controvert the respective averments, or any or either of them in the said indictment and in the respective counts thereof, viz., that your petitioner did engage in the said alleged conspiracies in said indictment mentioned and referred to, in the said Middle District of Tennessee, in manner and form as in the said indictment in that behalf averred, or to contradict or controvert or disprove any of the averments in the said indictment contained,—on the ground, then and there stated, that upon the said hearing of said complaint, the said certified copy of the said indictment was conclusive evidence of every fact therein averred to sustain and prove upon the said hearing the said complaint of the said Morgan Treat, United States Marshal, and the averments thereof, and the probable cause of the commission by your petitioner of the said supposed offenses in the said indictment mentioned and of any and every of them in the manner and
7 form as in the said indictment averred, and in that behalf, your petitioner then and there took the witness stand and

demanded to be sworn as a witness in his own behalf, but the Counsel for the Government objected, and the objection was by said Judge sustained, and he was not permitted to be sworn or to testify.

5.

That thereupon, then and there, your petitioner by his counsel stated to the Judge that he would prove, and then and there his said counsel offered to prove by your petitioner as a witness the following facts, which facts are true, that is to say:

That your petitioner is and for many years has been a resident and citizen of Pensacola, Florida; that he has not been within the State of Tennessee since 1900, except since the Grand Jury was empanneled which found the said indictment, and that neither he, nor the said company of which he is an officer ever at any time sold or delivered or offered to sell or deliver, or furnish or offered to furnish or ship any fertilizer merchandise or any other merchandise either in or into or out or out of the State of Tennessee and that neither he nor his said company ever entered into any conspiracy in restraint of interstate trade, business or commerce in or within the limits of the State of Tennessee; (and that he never directly or indirectly at any time or place entered into any conspiracy alleged and set forth in the indictment engaged in in the Middle District of Tenn. and that he never knew of or assented to any of the acts or things which it is averred in the indictment were done or committed by any of his co-defendants within the limits of the
8 State of Tennessee and also offered then and there to prove the same facts by other witnesses present.

The defendant in the indictment named the Goulding Fertilizer Co. Ltd. has dissolved and gone out of business and has not done business of any kind nor done any act or thing within the limits of Tennessee since 1902.

That the United States Attorney, on behalf of the Government, then and there objected to the introduction or reception by the said Judge of the said evidence so offered on behalf of your petitioner, and to each and every part thereof, on the ground hereinbefore stated, which objection was then and there sustained by the Court on the ground that the said certified copy of the said indictment so introduced on behalf of the Government, the identity of your petitioner as aforesaid being admitted by your petitioner as aforesaid, was conclusive evidence of the existence of every fact stated in the indictment, including the averments that the conspiracies alleged in the said indictment were engaged in in the Middle District of Tennessee, and that therefore said evidence or any evidence offered by and on behalf of your petitioner to controvert, contradict or disprove the averments of the said indictment in that behalf, or any or either of them, was incompetent and inadmissable; and the said Judge, then and there, on the grounds aforesaid, excluded and refused to receive said evidence so offered on behalf of your petitioner, or any part thereof, to which ruling of the Judge, your petitioner then and there, by his counsel, duly excepted.

7.

That thereupon the said Judge, upon the complaint and upon the evidence so introduced for and on behalf of the Government as aforesaid, made and signed a certain order reciting his said ruling as aforesaid and ordering as in said order appears, which said order is as follows:

THE UNITED STATES OF AMERICA, *Eastern District of Virginia:*

THE UNITED STATES
vs.
WM. DEC. KESSLER.

This is an application under the provisions of section 1014 of the United States Revised Statutes for a warrant for the removal of Wm. DeC. Kessler to the Middle District of Tennessee and comes before me as follows:—

The District Attorney for this District, together with Mr. E. T. Sanford, Counsel for the United States, presented to me, a verified complaint of Morgan Treat, United States Marshal for this District, with the certified copy of an indictment filed on May 25th, 1906, in the Circuit Court of the United States for the Middle District of Tennessee in the case of the United States *vs.* Virginia-Carolina Chemical Company and other defendants, including among such defendants the said —— ——.

Said complaint and copy of said indictment are made parts of this order.

Upon the exhibition of this indictment and affidavit and the *ex parte* motion of the Counsel for the United States, I made an order for the arrest of said Wm. DeC. Kessler and his production before me.

This order was duly executed by the said Marshal, who arrested the said Wm. DeC. Kessler and brought him before me in Richmond on this 14th day of July, 1906, as shown by his return. When the accused was so brought before me it was moved by the Counsel for the United States that inasmuch as the indictment charged offenses against the United States triable in the Circuit Court of said United States for the Middle District of Tennessee, and the identity of the defendant was admitted, that an order be forthwith made for the commitment of said Wm. DeC. Kessler for trial before the said Circuit Court.

This motion was made upon the certified copy of the indictment without any further testimony, the identity of the party arrested and brought before me as the Wm. DeC. Kessler mentioned in the indictment being admitted.

It was further stated and agreed that while the defendant William DeC. Kessler was not a resident of the Eastern District of Virginia, he was present in this District with his counsel, and that so far as the jurisdiction in the Eastern District of Virginia was concerned, he consented to these proceedings being instituted here, and to their

being conducted here with the same force and effect, and in like manner as if he were a resident of the Eastern District of Virginia; and furthermore waived the previous issuance of any bench warrant for his arrest, from the Circuit Court of the Middle District of Tennessee, if the same were necessary.

And thereupon the defendant, Wm. DeC. Kessler offered himself as a witness in his own behalf, and being about to be sworn, the United States, by its Counsel, thereupon objected to the witness being sworn, or to any testimony being given in rebuttal of the indictment in these proceedings, on the ground that the identity of the defendant being admitted, inasmuch as the indictment
11 on its face charges offenses against the United States committed and triable in the jurisdiction in which the defendant stands indicted, no evidence is admissable here to impeach the indictment, and the order of commitment should be made without other proof.

The defendant's counsel thereupon offered to prove by the defendant, and other witnesses then and there present, that the Circuit Court for the Middle District of Tennessee had no jurisdiction over the person of said defendant touching the offense charged in said indictment, in that defendant and said other witnesses would, if permitted, testify

That your petitioner has not been within the State of Tennessee since 1900, except since the Grand Jury was empannelled except perhaps in transit by rail which found the said indictment, and that neither he, nor the said company of which he is an officer ever at any time sold or delivered or offered to sell or deliver or furnished or offered to furnish or ship any fertilizer merchandise or any other merchandise either in or into or out or out of the State of Tennessee and that neither he nor his said Company ever entered into any conspiracy in restraint of interstate trade, business or commerce in or within the limits of the State of Tennessee, and that he never directly or indirectly at any time or place entered into any conspiracy alleged and set forth in the indictment and that he never knew of or assented to any of the acts or things which it is aver-ed in the indictment were done or committed by any of his co-defendants within the limits of the State of Tennessee, and also then and there offered to prove the same facts by other witnesses then present. Nor
12 has defendant done, or performed, or been engaged in, or a party to the same, or any of them in any other place or places at any other time or times whatsoever.

Thereupon Counsel for the Government renewed its objections as aforesaid and also objected to the introduction of the proposed testimony on the further ground that same was wholly incompetent, immaterial, and irrelevant.

After hearing counsel on both sides, the Court announced its conclusions as follows:—

"The conclusion reached by the Court is that in a proceeding for the arrest and removal of persons charged with a violation of the laws of the United States pursuant to section 1014 of the Revised Statutes of the United States, before a United States District Judge,

sitting in the State of Virginia, in which State there no longer exists the right of a preliminary examination upon a crime charged prior to the trial upon the merits, when said Judge is called upon to act as well in the matter of the apprehension of such persons, as in their removal to the jurisdiction in which they have been indicted, that upon the government's presentation of a sufficient indictment regularly found by a grand jury in a court of the United States, properly charging the commission of an offense within the district in which such indictment is found, coupled with proof of the identity of the person indicted, it is its duty to properly bail such person for appearance before the court in which he is indicted, or cause him to be removed thereto."

Therefore it was ordered that the testimony offered is inadmissible, and will not be received, and I therefore made the following order:

13 UNITED STATES OF AMERICA,
Eastern District of Virginia, sct:

The within named Wm. DeC. Kessler having been brought before me, and identified; and it appearing by a duly authenticated copy of an indictment that he stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," for violation of section one of the act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for violation of section 5440 of the Revised Statutes of the United States, it is ordered that the said Wm. DeC. Kessler give bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial before said Court under the said indictment; or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee, to be there dealt with according to law.

Richmond, Va., July 14, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

And after said order had been made and the defendant declined to give bond, the Counsel for the United States moved that the warrant do issue directed to the Marshal of this District for the imprisonment and removal of the said Wm. DeC. Kessler to the
14 middle District of Tennessee, and his delivery to the custody of the United States Marshal of that District.

On such motion counsel for the said Wm. DeC. Kessler objected and again offered the said Wm. DeC. Kessler as a witness, together with the other witnesses herebefore referred to, to establish the same matters and facts as hereinbefore stated with regard to the objection to the order for the commitment of the said Wm. DeC. Kessler which testimony was again offered and was again objected to by the Counsel for the United States on the same grounds above set forth, and on the further ground that these matters could not now be inquired of

in this stage of the proceedings, and was again excluded by the Court, to all of which counsel for the said Wm. DeC. Kessler duly excepted and had the exceptions noted and entered.

EDMUND WADDILL, JR., *Judge.*

I therefore issued a warrant directed to the Marshal as follows:

Warrant of Imprisonment and Removal.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The President of the United States to the United States Marshal of the Eastern District of Virginia, Greeting:

Whereas it has been made to appear that Wm. DeC. Kessler stands indicted in the Circuit Court of the United States for
15 the Middle District of Tennessee in cause No. 933 in said Court entitled: "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," for violation of section one of the act of Congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States; and whereas the said Wm. DeC. Kessler having been brought before me, and identified; and a certified copy of said indictment furnishing probable cause to believe him guilty as therein charged, and whereas it was thereupon ordered by me that said defendant give bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United — for the Middle District of Tennessee for trial under said indictment, or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee to be there dealt with according to law; and the said defendant having failed and refused to give bail as required, therefore:

You are hereby commanded in the name and by the authority of the said United States to imprison the said Wm. DeC. Kessler in accordance with law, and that with all convenient speed you remove him hence to the said Middle District of Tennessee and there surrender him to the Marshal of that District, there to be dealt with according to law.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

Richmond, Va., July 14th, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

Richmond, Va., July 14th, 1904.

8.

Your petitioner further says that he is advised, and he charges and submits, that under and by virtue of Clause 3, of Section
16 2, of Article 3, of the Constitution of the United States, and of the Sixth Amendment to the said Constitution, your petitioner is entitled to be tried and can only be indicted and tried

for any alleged offenses against the Laws of the United States, in the State and District in which the offense, which the indictment charges, was committed; that the said supposed offenses in the said indictment mentioned and charged, were not, nor was any or either of them, committed in the said Middle District of Tennessee; that none of the alleged acts, transactions, matters or things which are in the said indictment mentioned or referred to as being and constituting the supposed engaging by this defendant in the said alleged conspiracies in the said indictment referred to, or any or either of them, were done or held or took place within the said Middle District of Tennessee, and no alleged act, transaction, matter or thing, in the said indictment mentioned or referred to as being the doing by this defendant of an act to effect the object of said conspiracy was done or held or took place within the said Middle District of Tennessee; and that your petitioner is and for many years has been a resident and citizen of Pensacola, Florida; that he has not been within the State of Tennessee since 1900, except since the Grand Jury was empanneled which found the said indictment, and that neither he, nor the said company of which he is an officer ever at any time sold or delivered or offered to sell or deliver or furnish or offered to furnish or ship fertilizer merchandise or any other merchandise either in or into or out or out of the State of Tennessee and that neither he, nor his said company ever entered into any conspiracy in restraint of interstate trade, business or commerce in or within
17 the limits of the State of Tennessee, and that none of the supposed meetings acts transactions matters or things which are mentioned or referred to in said indictment or in any count thereof, or which are or were relied upon, charged or supposed by the Government to have been had made done or taken place as being or constituting either by themselves or with others the said supposed engaging in the said alleged conspiracies or any of them were or was had, made done or took place in the said Middle District of Tennessee other and except the following acts, viz.: the act alleged in the first Count of said indictment in the Middle District of Tennessee by the Virginia Carolina Chemical Co., by Armour & Co., by the Federal Chemical Co., by the Harmon Farm Improvement Co., by the National Fertilizer Co., by William P. Rhea, by Abram C. Read, by the Tennessee Chemical Co., by J. Garland Tinsley that he did not do any act in pursuance of the said alleged conspiracies in the said indictment mentioned, engaged in in the Middle District of Tennessee, or any or either of them, in furtherance of the said alleged conspiracies in said indictment mentioned, or any or either of them, or to effect the object of the same, or as an act on the part of your petitioner of engaging in the same.

9.

That thereupon, the United States Attorney moved the commitment of your petitioner to the Marshal of the said District for removal to the Middle District of Tennessee for trial upon the Indictment in the United States Circuit Court for said District, and the said Attorney for the United States thereupon made a motion before the Honorable Edmund Waddill, Jr., Judge, for the issuance

of a warrant for the removal of your petitioner to the Middle
18 District of Tennessee for trial as aforesaid in the United States Circuit Court for said District upon the said indictment, and the said motion was allowed, and said warrant was in pursuance thereof issued by the said Judge, and a copy thereof is embraced in the order of the said Judge hereinbefore recited as and made a part hereof. That thereupon the said Marshal of the Eastern District of Virginia, to whom the said warrant was directed, took your petitioner into custody upon the said warrant and now holds your petitioner thereunder and threatens to take and remove your petitioner to the Middle District of Tennessee, as directed by the said warrant and will do so, unless your Honor shall issue the writ of *Habeas Corpus* herein prayed for. Your petitioner further says that in case your petitioner is removed under the said warrant to the said Middle District of Tennessee for trial upon said indictment and is there held for trial and tried upon said indictment, your petitioner will not be tried within the District in which the said alleged offenses charged in the said indictment were committed, as required by the Sixth Amendment to the Constitution of the United States, and by Clause 3, of Section 2, of Article 3 of said Constitution, and will be tried in violation of his rights under said provisions of the said Constitution. Your petitioner further says that he is advised, and he charges, that the said indictment does not charge the commission by your petitioner of any offense against the Laws of the United States, and that same is in that behalf insufficient and void.

10.

That the imprisonment and detention of your petitioner is without authority of law, and the said proceedings before said United
19 States District Judge are illegal and the said warrant of removal was illegally issued and in violation of Article 3, Section 2, of the Federal Constitution, and of the Sixth Amendment to the said Constitution; and that then and thereby the said rulings of the said District Judge, in the exclusion of the said evidence and in holding that the said certified copy of the Indictment was conclusive evidence as aforesaid, and in refusing to permit your petitioner to introduce any evidence on his behalf, as aforesaid, your petitioner was deprived of rights secured to him by the said provisions of the said Constitution and by Section 1014 of the Revised Statutes, and was and is by said Morgan Treat United States Marshal deprived of his liberty without due process of law.

Wherefore, your petitioner prays that a writ of *Habeas Corpus* be issued, directed to the said United States Marshal of the Eastern District of Virginia, who has your petitioner in custody, demanding him to bring the body of your petitioner before this Court forthwith; and further that a writ of Certiorari be directed to the said Honorable Edmund Waddill, Jr., Judge as aforesaid, commanding that he return all proceedings against this petitioner to this court forthwith, for such action as may be proper in the premises.

WILLIAM DeC. KESSLER,
By JOHN J. VERTRESS, *Att'y.*

JAMES C. BRADFORD, *Counsel.*

20 UNITED STATES OF AMERICA,
Eastern District of Virginia, County of Henrico, ss:

Wm. DeC. Kessler being duly sworn, deposes and says that he has read the foregoing petition, and knows the contents thereof, and that the same is in all respects true. W. DEC. KESSLER.

Sworn to and subscribed to before me this 14th day of July, 1906.
JOSEPH P. BRADY,
Clerk U. S. Circuit Court.

EX. A.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

On this 14th day of July, A. D. 1906, at the City of Richmond, in the said District, before the Hon. Edmund Waddill, Jr., Judge of the District Court of the United States of America for the said District, comes Morgan Treat, United States Marshal in and for the said District, and upon his oath complains and says: that he has good cause to believe and does firmly believe that William DeC. Kessler stands indicted by the grand jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that
21 the said William DeC. Kessler on the eighth day of July, in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, being during said period Secretary & Treasurer of the Goulding Fertilizer Company a corporation existing under and by the laws of Great Britain & Ireland did in the said Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eight- day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said William DeC. Kessler did unlawfully conspire with divers other persons and corporations to commit an offense against the United States, to-wit, the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States, all as more fully set out in an indictment filed in the said Circuit Court of the United States in and for the Middle District of Tennessee on May 25, 1906, in cause No. 963, entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," a certified copy of which indictment is hereto attached and made a part of this complaint; and complainant therefore charges that the said William DeC. Kessler did commit the said offenses against the United States in manner and form as set forth in said indictment.

Complainant furthermore avers upon information and belief that said William DeC. Kessler is now believed to be within the Eastern District of Virginia.

Wherefore this complainant prays that the said William
22 DeC. Kessler may be arrested and imprisoned and removed or bailed, as the case may be, for trial before the said Circuit

Court of the United States for the Middle District of Tennessee, and further dealt with according to law.

MORGAN TREAT, *Marshal.*

Subscribed and sworn to before me by the above named Morgan Treat the day and year first above written.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

EXHIBIT B.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

To the Marshal of the Eastern District of Virginia, Greeting:

Whereas complaint in writing, on oath, has been made to me charging that William DeC. Kessler of Florida stands indicted by the grand jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said Wm. DeC. Kessler on the eighth day of July, in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, did in the Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled
23 "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said Wm. DeC. Kessler did unlawfully conspire with divers other persons and corporations to commit an offense against the United States, to-wit, the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States, and application has been made to me that the said Wm. DeC. Kessler may be arrested and imprisoned and removed, or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee;

Now therefore, you are hereby commanded to arrest the said Wm. DeC. Kessler if he be found within your said District, and bring him forthwith before me at my Chambers in Richmond, in order that he may be dealt with according to law.

EDMUND WADDILL, JR.,
District Judge.

Richmond, July 14, 1906.

Pursuant to the within writ, I have taken the defendant William DeC. Kessler into custody and now have him before Hon. Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia.

MORGAN TREAT,
United States Marshal.

July 14th, 1906.

24 EXHIBIT C.

In the Circuit Court of the United States of America for the Middle District of Tennessee, of the April Term, in the Year of Our Lord Nineteen Hundred and Six.

MIDDLE DISTRICT OF TENNESSEE, *Sct:*

The grand jurors for the United States of America, inquiring for the Middle District of Tennessee, upon their oath present, that before and on the eighth day of July, in the year of our Lord nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year of our Lord nineteen hundred and five, the following named corporations, respectively organized and existing under and authorized by the laws of the several States and of the foreign country here named in connection with them, and hereafter in this indictment called corporation defendants, to wit, the Virginia-Carolina Chemical Company, of New Jersey, Armour and Company, of Illinois, the Acme Manufacturing Company, of North Carolina, the Alabama Chemical Company, of New Jersey, the Anderson Phosphate & Oil Company, of South Carolina, the Ashepoo Fertilizer Company, of South Carolina, the Blackshear Manufacturing Company, of Georgia, the Etiwan Fertilizer Company, of South Carolina, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, The Furman Farm Improvement Company, of Georgia, the Goulding Fertilizer Company, Limited, of Great Britain and Ireland, The Goulding Fertilizer Company, of Florida, the Gulfport Cotton Oil, Fertilizer & Manufacturing Company, of Georgia, the Home Mixture Guano Company, of Georgia, the Jackson Fertilizer Company, of Mississippi, the Marietta Fertilizer Company, of Georgia, the Meridian Fertilizer Factory, of Mississippi, the National Fertilizer Company, of Tennessee, the New Orleans Acid and Fertilizer Company, of New Jersey, the Old Dominion Guano Company, of Georgia, the Planters Chemical Company, of Alabama, the
25 Read Phosphate Company, of West Virginia, the F. S. Royster Guano Company, of Virginia, the Savannah Guano Company, of Georgia, the Southern States Phosphate and Fertilizer Company, of Georgia, the Standard Chemical & Oil Company, of Alabama, the Standard Guano and Chemical Manufacturing Company, of Louisiana, Swift & Company, of Illinois, the Tennessee Chemical Company, of Tennessee, and the Tennessee Valley Fertilizer Company, of Alabama, and certain firms, to wit, the firm of A. D. Adair and McCarty Brothers and the firm of Wilcox, Ives & Company, did carry on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereafter in this indictment called the States of the conspiracy, as wholesale dealers in complete and alkaline fertilizers and in acid phosphates, nitrates, and potash salts suitable for fertilizers, which then were useful and valuable

articles of merchandise, indispensable for use on the soil of the said States of the conspiracy in order that the staple crops of those States might be raised therefrom; that the following named persons, hereafter in this indictment called individual defendants, to wit, Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, of the said Virginia-Carolina Chemical Company, and J. Rice Smith, agent and manager of the said Virginia-Carolina Chemical Company, and president of the Georgia Chemical Works hereinafter mentioned, Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, Fred G. Brown, president and treasurer of the said Anderson Phosphate & Oil Company, Frank Burbidge, president, and William J. McCormack, treasurer, of the said Etiwan Fertilizer Company, George Braden, president of the said Federal Chemical Company, of Delaware, and also of the said Federal Chemical Company, of Kentucky, Augustus D. Adair and James D. McCarty, officers and agents of the said Furman Farm Improvement Company and members of the said firm of A. D. Adair and McCarty Brothers, William DeC. Kessler, secretary and treasurer of the said Goulding Fertilizer Company, Limited, James G. Tinsley, president of the said Marietta Fertilizer Company and vice-president of the said Tennessee Chemical Company, William D. Rhea, general manager of the said National Fertilizer Company, William L. Peel, president of the said Old Dominion Guano Company, Abram C. Read, vice-president and general manager, and Isaac Mayo Read, agent, of the said Read Phosphate Company, Frank S. Royster, president, and Charles F. Bur-
26 roughs, vice-president, of the said F. S. Royster Guano Company, A. J. Ives, whose Christian name is to the said grand jurors unknown, secretary and treasurer of the said Savannah Guano Company and a member of the said firm of Wilcox, Ives & Company, T. Porter Fleming, vice-president of the said Southern States Phosphate and Fertilizer Company, and T. Garland Tinsley, president and treasurer of the said Tennessee Chemical Company, in their said several capacities as officers, managers, agents, and attorneys of the said corporation defendants and members of the said firms, and on behalf of those corporations and firms, during the period of time in this indictment first aforesaid, did carry on the business aforesaid; that in so carrying on the said business the said defendants, that is to say, the said corporation and individual defendants, did sell and deliver large quantities of the said merchandise within the limits of the said States of the conspiracy from the respective places of business of the said corporation defendants and the said firms, located at different points within those States, to retail dealers in and consumers of such merchandise, in such States respectively, and did also ship large quanti-es of the same from their respective places of business, located in the said States of the conspiracy and also in the States of Virginia, Illinois, and Kentucky, into and through other of the said States than those in which their said places of business were located; that in so carrying on the said busi-

ness and shipping the said merchandise from one of the said States into and through another or others thereof, the said defendants, during the period aforesaid, were engaged in trade and commerce among the States of this Union within the meaning of the Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in so carrying on the said business, trade and commerce, the said Virginia-Carolina Chemical Company and the said Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, and J. Rice Smith, agent and manager, of the said Virginia-Carolina Chemical Company, did make use of and operate a portion of their said business, trade and commerce through each of certain other corporations, to wit, the American Fertilizer Company, of Virginia, the Birmingham Fertilizer Company, of Alabama, the Coweta Fertilizer Company, of Georgia, the Georgia Chemical Works, of Georgia, the Navassa Guano Company, of North Carolina, of either the whole or a majority of the capital stock of which said corporations respectively the said Virginia-Carolina Chemical Company was the owner;

27 that in so carrying on the said business, trade and commerce, the said Armour and Company and the said Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, did make use of and operate all of their said business, trade and commerce through a certain other corporation called the Tuscarora Fertilizer Company, of New Jersey, and a certain trade name, to wit, the trade name of Armour Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Furman Farm Improvement Company and the said firm of A. D. Adair and McCarty Brothers did make use of and operate a portion of their said business trade, and commerce under the trade name of Chickamauga Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Federal Chemical Company, of Delaware, and the said Federal Chemical Company of Kentucky, did make use of, and operate a portion of their said business, trade and commerce through, the names of Century Phosphate Company, Fox Chemical Company, Branch Globe Fertilizer Company, Branch and Tennessee Phosphate Company; that in so carrying on the said business, trade and commerce, the said National Fertilizer Company did make use of, and operate a portion of its said business, trade and commerce through, the corporate name of American Guano Company and the trade name of Nashville Guano Company; that in so carrying on the said business, trade and commerce, the said Read Phosphate Company did make use of, and operate a portion of its said business, trade and commerce through the corporate name of Empire Guano Company; that in so carrying on the said business, trade and commerce, the said F. S. Royster Guano Company did make use of, and operate a portion of its said business, trade and commerce through the trade name of Atlantic Chemical Company and the corporate name of Columbia Guano Company; that in so carrying on the said business, trade and

commerce, the said Swift and Company did make use of, and operate the whole of its said business, trade and commerce through the trade name of Swift Fertilizer Works; and that in so carrying on the said business, trade and commerce, the said Tennessee Chemical Company did make use of, and operate a portion of its said business, trade and commerce through, the trade name of Continental Fertilizer Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that of the total volume of such business, trade and commerce then so being carried on by the said defendants and their competitors, the said defendants together had and controlled the principal part, that is to say, ninety per centum thereof; and
28 that because the said corporation defendants and the said firms were in fact separate and distinct from each other, they should have conducted their interstate trade and commerce strictly in competition with each other, during the said period, and then would have so conducted the same but for the unlawful conspiracy in restraint of the said business, trade and commerce in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, at and within the said Middle District of Tennessee, in violation of the provisions of said section one of the said Act of Congress, unlawfully did knowingly engage in a conspiracy in restraint of the said business, trade and commerce, so then being carried on by them in the manner aforesaid, whereby the said business, trade and commerce was restrained in the several ways and by the several means now here set forth and described, that is to say:

Competition as to the prices at which the said merchandise was sold and delivered by the said corporation defendants and the said firms in the said States of the conspiracy, which before the period of time in this indictment first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was prevented and destroyed by the said defendant from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them styled "current, reasonable market prices," for the said merchandise so sold and delivered by the said corporation defendants and the said firms in those States, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so fixed and caused to be fixed; which said uniform and non-competitive prices were prices greatly in excess of the prices which but for the said unlawful conspiracy would at such times have prevailed for the said merchandise in the said business, trade and commerce, and were prices therefore unreasonable, and were a tax on the people of the said States of the said conspiracy amounting to a large sum of money, to wit, four million dollars, annually during the continuance of the same.

For and on account of such quantity of the said merchandise as was sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts allotted and caused

to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and
29 delivered in excess, was, by the corporation defendants and firms so selling and delivering the same, paid into a common fund, held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, compensated, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as sold and delivered less than the amounts so allotted to them respectively, so it was not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy that each of the said corporation defendants and of the said firms also paid into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment to be the absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm, in disposing of its said allotment in carrying on the said business, trade and commerce, on its part faithfully should exercise every reasonable effort and due business diligence to maintain the prices so fixed and caused to be fixed as aforesaid and pay into the said fund the sum accruing to the same on account of its said excess sales, in which case an equal amount was returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also made uniform and non-competitive as between all of the said corporation defendants and the said firms, in the said business, trade and commerce, among the said States of the conspiracy.

As a convenient intermediary and common agent between the said corporation defendants and the said firms, respectively and as a means of securing their co-operation in carrying out the said unlawful conspiracy, the said defendants made use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company, Limited, was also allowed and required to collect, hold, use and distribute the said fund
30 arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that, in pursuance of the said unlawful conspiracy,

and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of September, in the year nineteen hundred and three, during the period of time aforesaid, at and within the City of New York, in the State of New York, unlawfully did knowingly deposit with the Continental Trust Company, of the said City of New York, the sum of twenty-six thousand dollars, in connection with the purchase *of* by the said trust company on behalf of the said Virginia-Carolina Chemical Company, and in the name of one Montrose Stuart, a clerk in the office of the said trust company, of twenty-six hundred shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Samuel T. Morgan, on the seventh day of October, in the same year nineteen hundred and three, and during the period of time aforesaid, at and within the said city of New York, in the State of New York, unlawfully did deliver to the said William DeC. Kessler, Vice-President of the said Colonial Development Company, Limited, three checks drawn by the said Virginia-Carolina Chemical Company, one upon the National City Bank, of New York City aforesaid, for eighty thousand dollars, another on the Bank of America, of New York City aforesaid, for fifty thousand dollars, and the other on the National Park Bank, of New York City aforesaid, for thirty-five thousand and four hundred and sixty-eight dollars, aggregating one hundred and sixty-five thousand and four hundred and sixty-eight dollars, as and for a payment, by the said Virginia-Carolina Chemical Company, to the said Colonial Development Company, Limited, of twenty cents a ton on its allotment under the said unlawful conspiracy; he the said Samuel T. Morgan, when and where he so as aforesaid delivered the said checks to the said William DeC. Kessler, well knowing the character and purpose of the same, and well knowing that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as acts on their parts respectively of engaging in the same, the said Samuel T. Morgan,
31 Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, on the seventeenth day of September, in the year nineteen hundred and three, and during the period aforesaid, at the said City of New York, in the said State of New York, unlawfully did meet together to discuss and further the object of the said unlawful conspiracy; they the said Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred G. Brown,

Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, when and where they so as aforesaid met together, each well knowing the character and purpose of the said meeting, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank E. Wilcox, on the first day of November, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did deliver to one W. W. Perkins, Secretary of the said American Fertilizing Company, a certain document, too voluminous to be here set forth, stating certain prices and terms of sale, fixed in pursuance of the said unlawful conspiracy, for the said fetilizer merchandise, in the States of North Carolina, South Carolina, Georgia, Florida, Alabama and Tennessee, for the spring season of the year nineteen hundred and four; he the said Frank E. Wilcox at the time and place when and where he so as aforesaid delivered the said document to the said W. W. Perkins, well knowing the character of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, and during the period of time aforesaid, at the town of Decherd, in the said Middle District of Tennessee, by and through one
32 F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, and during the period aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, and during the period of time aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at the City of Nashville, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, a certain notice of shipment, partly written and partly printed, in the words and figures following, that is to say:

"The Armour Fertilizer Works
Owned and operated by
Armour & Company.

Prudential Building,
Atlanta, Ga.

Duplicate.
To be Mailed with Bill of
Lading to Customer.

No. 612
March 10", 1905.

33 We have this day shipped from Nashville, Tenn. storage

To Bramlitt Hdw Co.
Corinth, Miss.

Charge to S. D. Bramlitt. Address same.

No. Bags.	Weight of bags.	Brand.	Tons.
400	100	King Cotton 8.2.2	20

Order No. 4613.

Bill of lading herewith. Invoice will be mailed from Chicago.
Above quantities shipped 3 10 1905. Freight Terms.....
Car No. 13619. Via L. & N.
Charges prepaid $48.00.

THE ARMOUR FERTILIZER WORKS,
Per ALEX. LESLIE."

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Austin B. Carpenter, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Assistant Secretary of the said Colonial Development Company, unlawfully did sign his name, to wit, "A. B. Carpenter, Asst. Secy." on the face of a certain stock certificate, to wit, certificate No 28, showing the ownership by one Thomas M. Green of fifty-one shares of the capital stock of the said Colonial Development Company; he the said Austin B. Carpenter, at the time and
34 place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his said act to be done in pursuance and to effect the object of the said conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles H. MacDowell, on the twelfth day of January, in the year nineteen hundred and five, and during the period of time aforesaid, at and within the city of Chicago, in the State of Illinois, unlawfully did sign his name, to-wit, "C. H. MacDowell," under the name of the Armour Fertilizer Works, and after the word "by" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Armour and Company, under the trade name of "Armour Fertilizer Works," offered to furnish and deliver at Corinth, in the State of Mississippi to one S. D. Bramlitt, twenty tons of the fertilizer merchandise aforesaid; he the said Charles H. MacDowell, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of gaging in the same, the said Alabama Chemical Company, on the the first day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the city of Wilmington, in the State of North Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of six hundred and twenty

dollars for sixty-two shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Alabama Chemical Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Montgomery, in the State of Alabama, unlawfully did knowingly deliver its certain check drawn upon the Merchants and Planters-Farley National Bank, Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of William DeC. Kessler, as payment for forty-two shares of the capital stock of the said Colonial Development Company, Limited;

35 And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Anderson Phosphate and Oil Company, on the twenty-ninth day of August, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Anderson, in the State of South Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of five hundred and eighty dollars for fifty-eight shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly buy from the Carolina Savings Bank, Charleston, South Carolina, a draft upon the Citizens National Bank, of New York City, for the payment of the sum of seven thousand nine hundred and forty-nine dollars and forty-three cents to the order of one Frank E. Taylor, Vice-President and General Manager of the said Ashepoo Fertilizer Company;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and *and* during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly cause the said Frank E. Taylor to endorse the check last above mentioned payable to the order of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Blackshear Manufacturing Company, on the seventeenth day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Blackshear, in the State of Georgia, unlawfully did knowingly deliver to the Atlantic Coast Line Railroad Company six tons of the fertilizer merchandise aforesaid, consigned and to be shipped

to the firm of E. J. Blume & Company, at Live Oak, in the State of Florida;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Etiwan Fertilizer Company, on the fourteenth day of December, in the year nineteen hundred and
36 three, and during the period of time aforesaid, at and within the town of Cairo, in the State of Georgia, by and through one P. H. Seabrook, its agent, unlawfully did knowingly offer and agree to furnish and deliver to the firm of Wight Brothers, of Cairo aforesaid, thirty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank Burbidge, on the first day of July, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Charleston, in the State of South Carolina, having then and there in his hands a certain check, dated the thirtieth day of June, in the same year nineteen hundred and four, drawn by the said Alabama Chemical Company upon the Continental National Bank of Chicago, for the payment of eleven hundred and forty-two dollars and ninety-seven cents to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Pay to order of People's National Bank, Colonial Development Co., Ltd., F. Burbidge, Pres."; he the said Frank Burbidge then and there, to wit, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William J. McCormack, on the ninth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, having then and there in his hands a certain check dated the fifth day of September, in the same year, drawn by the said New Orleans Acid & Fertilizer Company, upon the Louisiana National Bank of New Orleans, for the payment of seven hundred and fifty dollars to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Colonial Developm't Co., Frank Burbidge, Sec. & Treas., per Wm. J. McCormack"; he the said William J. McCormack, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of en-

gaging in the same, the said Federal Chemical Company, of
37 Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the said State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, and during the period of time aforesaid, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did
38 knowingly cause to be delivered, to the said firm of Fiser, Orndorff & Williams, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Goulding Fertilizer Company, Limited, on the twenty-fifth day of November, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the

town of Cullman, in the State of Alabama, by and through one W. E. Craig, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one John Sutterer, at Cullman aforesaid, three hundred and seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the sixth day of September, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Pensacola, in the State of Florida, having then and there in his hands a certain check, dated the fifth day of September, in the same year nineteen hundred and three, drawn by the said Alabama Chemical Company upon Merchandise Merchants and Planters-Farley National Bank of Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of W. DeC. Kessler, unlawfully did sign his name, to wit, "W. DeC. Kessler," upon the back of the said check next below the written words "Pay to the order of Colonial Development Co."; he the said William DeC. Kessler then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the back of the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the said fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Vice-President of the said Colonial Development Company, unlawfully did sign his name, to wit, "W. DeC. Kessler, V. P." on the face of the said stock certificate in the name of Thomas M. Green; he the said William DeC. Kessler, at the time and place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his act to be done in pursuance and to effect the object of
39 the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Gulfport Cotton Oil Fertilizer and Manufacturing Company, on the twenty-seventh day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-four hundred dollars for and in respect of twelve thousand tons of the fertilizer merchandise aforesaid, allotted to the said Gulfport Cotton Oil, Fertilizer and Manufacturing Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Home Mixture Guano Company, on a day in the year nineteen hundred and three to the said grand jurors

unknown, and during the period of time aforesaid, at and within the City of Columbus, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Jackson Fertilizer Company, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Jackson, in the State of Mississippi, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Marietta Fertilizer Company, on the twenty-first day of July, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by and through one L. W. Reeves, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one James A. Boyd, at Jonesboro aforesaid, seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Nashville, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley; he the said James G. Tinsley, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Meridian Fertilizer Factory, on the seventh day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Cullman, in the State of Alabama, by its agent E. L. Robbins, unlawfully did knowingly offer to furnish to C. A. Steifelmeyer one hundred and fifty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said National Fertilizer Company, on the

second day of March, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eightly dollars to the order of F. Burbidge; he the said William D. Rhea, then
41 and there, to wit, at the time and place when and where he so directed and required the said E. W. Connell to sign his name as aforesaid to the said check, well knowing the nature and contents of the said check, and that his said direction and requirement were in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid he the said William D. Rhea then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the said document, well knowing the character of the same, and well knowing his said act to be one done in pursuance of and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said New Orleans Acid & Fertilizer Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did

knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars for seventy-five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Old Dominion Guano Company, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-six hundred and twenty dollars, for and
42 in respect of thirteen thousand one hundred tons of the fertilizer merchandise aforesaid, allotted to the said Old Dominion Guano Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William L. Peel, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did sign his name, to wit, "W. L. Peel, Prest.," to a certain check, to wit, a check drawn by the Maddox-Rucker Banking Company upon the National Park Bank, New York, for the payment of twenty-six hundred and twenty dollars to the order of the said Colonial Development Company, Limited; he the said William L. Peel, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Planters Chemical Company, on the thirtieth day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Talladega, in the State of Alabama, unlawfully did knowingly pay the said Colonial Development Company, Limited, the sum of fifty dollars for five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Read Phosphate Company, on the fifth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Hartselle, in the State of Alabama, unlawfully did knowingly offer to sell and deliver to one S. E. Stewart, at that place, forty to fifty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and

three, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too
43 voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid; he the said Abram C. Read, then and there, to wit, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved, Nashville Tenn. Dec. 6 1904," and above the word "Manager," upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof, offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid; he the said Abram C. Read then and there, to wit, at the time and place when and where he so as aforesaid signed his name to the last mentioned document, well knowing the character and contents of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said F. S. Royster Guano Company, on the thirtieth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine thousand three hundred and fourteen dollars and seventy-four cents, on account of such merchandise sold and delivered by the said F. S. Royster Guano Company in excess of its allotment under the aforesaid unlawful conspiracy;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles F. Burroughs, on the twenty-fifth day of March, in the year nineteen hundred and four,
44 and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did sign

his name, to wit, "C. F. Burroughs," under the word "countersigned" and above the words "Vice-President" upon the face of a certain document, partly written and partly printed, too voluminous to be here set forth in full, wherein and whereby the said F. S. Royster Guano Company and he the said Charles F. Burroughs, as Vice-President thereof, offered to sell to one J. W. Carter, and to deliver to him at Maxton, in the State of North Carolina, ten tons of the fertilizer merchandise aforesaid; he the said Charles F. Burroughs, at the time and place when and where he so as aforesaid signed his name to the said document, well knowing the character and contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Savannah Guano Company, on the second day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did knowingly pay to the said Frank Burbidge the sum of nine hundred and forty dollars for ninety-four shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said A. J. Ives, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did sign his name, to wit, "A. J. Ives, Secty. & Treas." to a certain check, to wit, a check drawn by the Savannah Guano Company upon the Merchants National Bank, Savannah, Georgia, for the payment of three thousand one hundred and forty dollars to the order of New York Exchange; he the said A. J. Ives, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Southern States Phosphate and Fertilizer Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of the time aforesaid, at and within the City of Augusta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine hundred and sixty dollars for ninety-six shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Chemical and Oil Company, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the

town of Troy, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand dollars for and in respect of one-half of forty thousand tons of the fertilizer merchandise aforesaid allotted to the said Standard Chemical and Oil Company, as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Guano and Chemical Manufacturing Company, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand seven hundred and seventy-four dollars and seventy-seven cents as a partial payment for and in respect of the fertilizer merchandise aforesaid, allotted to the said Standard Guano and Chemical Manufacturing Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Swift & Company, on the first day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by its agent, J. Z. Elliott, unlawfully did knowingly offer to furnish to one W. P. Diehl thirty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

And that, further in pursuance of the said unlawful con-
46 spiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes & Bro., at Oxford, Alabama, a certain letter of the tenor following, to wit:

T. G. Tinsley, Pres't & Treas. Allen Hardison, Sec'y.

Tennessee Chemical Company, Manufacturers and Importers of Ox Fertilizers.

NASHVILLE, TENN., *May* 17–'05.

Messrs. D. P. Haynes & Bro., Oxford, Ala.

DEAR SIRS: I am in receipt of your favor of the 16th and beg to state we could not allow any discount further than the 5 % for cash

settlement. We will be glad to have you settle in cash on this basis if you desire to do so, but are sorry to state we are not in a position to offer you any further discount.

Yours truly, T. G. TINSLEY, *President;*

he the said T. Garland Tinsley then and there, to wit, at the time and place when and where he so as aforesaid caused the said letter to be written and sent as aforesaid, well knowing that the same was so written and sent in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part in engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Company, James G. Tinsley. By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee
47 Chemical Company upon the Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley; he the said T. Garland Tinsley, at the same time and place when and where he so as aforesaid wrote the said endorsement on the back of the said check, well knowing the contents of the same, and that his said act was done in pursuance of and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Valley Fertilizer Company, on the second day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Florence, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars, as a partial payment for and in respect of fertilizer merchandise, aforesaid, allotted to the said Tennessee Valley Fertilizer Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on their parts respectively, of engaging in the same, the said Frank Burbidge, Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson, during the period of time aforesaid, at the City of New York, in the State of New York, the City of Washington, in the District of Columbia, Old Point Comfort and Hot Springs, in the State of Virginia, St. Augustine, in the State of Florida, and French Lick Springs, in the State of Indiana, unlawfully did as officers, directors and attorney of the said Colonial Development Company, Limited,

meet together for the purpose of discussing and attending to the affairs of the said Colonial Development Company, Limited; they the said Frank Burbidge, Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson when and where they so met together aforesaid, well knowing the purpose of such meetings, and well knowing their acts in the premises to be acts in pursuance and to effect the object of the said unlawful conspiracy, and that the same were done as acts on their parts respectively of engaging in the said unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, during the period of time aforesaid, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form aforesaid, unlawfully did engage in a conspiracy in
48 restraint of trade and commerce among the several States;

Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

SECOND COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the first count described, and were so engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord, nineteen hundred and three at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the grand jurors unknown, and engage in a conspiracy, among themselves and with such other unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid; which said unlawful conspiracy in this count mentioned then and there was a conspiracy for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described; that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the

said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing and causing to be fixed, uniform and non-competitive prices, by them to be styled "current, rea-
49 sonable market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such times prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum ther-of during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be the absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its excess

sales, in which case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their cooperation in carrying out the said unlawful conspiracy, the said defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, and as being acts on the part of the said corporation and individual defendants respectively of engaging in that conspiracy, are now here in this count charged to be acts by the same corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned, and to have been acts on the part of the said corporation and individual defendants respectively of engaging in the last-named unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidsón aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of trade and commerce among the several States; against the peace and dignity of the said United

States, and contrary to the form of the statute of the same in such case made and provided.

THIRD COUNT.

And the grand jurors, aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the said first count described, and so were engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the said United States, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the said United States, to wit, the offense of engaging in a combination, among themselves and with such other unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid, which said unlawful conspiracy in this count mentioned then and there was a conspiracy to engage in a combination for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described, that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and com-
52 merce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them to be styled "current, reasonable market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be

prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such times prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful combination and ninety per centum thereof during the second year; it being a further element of the said unlawful combination in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on the said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the
53 same on account of its excess sales, in which case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their coöperation in carrying out the said unlawful combination, the said defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and

the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful combination; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, are now here in this count charged to be acts by the said corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy to commit an offense against the said United States: Against
54 the peace and dignity of the said United States; Against the peace and dignity of the said United States, and contrary to the form of the statute in such case made and provided.

Fourth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names

and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State, but by way of and partly through another State, and were severally engaged both in local com-
55 merce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the aforesaid business and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section one of the said Act of Congress, approved July 2, 1890, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, The Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company of Delaware, the Federal Chemical

Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count,
56 to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly engage in a conspiracy in restraint of commerce among the several States, to wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, whereby the said commerce was restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise which were maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the period of such unlawful conspiracy, and greatly in excess of those prices which would have otherwise prevailed in the said States during the period of such unlawful conspiracy, and were therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby earnest money was given to secure the maintenance of such prices and compensation was made to those losing volume of business by reason of maintaining such prices, that is to say:

There was from time to time allotted to each of said corporation defendants and firms an amount of tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms paid into a common fund the sum

of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sums becoming due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which faithfully maintained such uniform and non-competitive prices and failed to make sales
57 and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but sold and delivered through itself and its subsidiary companies a minimum amount thereof required as a guarantee of good faith, received from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid fell short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies made such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, as a penalty upon such excess sales, paid into such common fund like amounts per ton on the said respective kinds of fertilizers, divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means whereby said unlawful conspiracy was effected, a corporation of Ontario, Canada, whose stock was apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was the common fund aforesaid into which was paid the earnest money and penalties on excess sales aforesaid, and from which was paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which the same was operated and directed.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that within the period aforesaid of said unlawful conspiracy in this count of this indictment mentioned, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and did do and perform such acts as acts on their respective parts of engaging in the said unlawful conspiracy in this count of this indictment mentioned, and that each of such defendants at the time and place when and where such defendants did and performed the acts hereinafter so set forth in connection with such defendant respectively, then

and there well knew the character of such act and that such
58 act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, and as an act on the part of such defendant in engaging in the same, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year, nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the
59 tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the

County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit,
61 "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Ten-

nessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec. 6 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abraham C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P.
62 Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said corporation and individual defendants, during the period of time aforesaid, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

Fifth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the

first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and
63 through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the several States of the conspiracy and the said States of Virginia, Illinois and Kentucy, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commence against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, approved July 2, 1890, the said corporation defendants named in the said first count, to wit, the Virginia-Caro-
64 lina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, and engage in a conspiracy among themselves and with such other unknown corporations and persons, in restraint of commerce among the several States, to-wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, by which unlawful conspiracy said commerce was to be restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the

various points of delivery in the said States of the conspiracy,
65 which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy, and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices, that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to make sales and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose
66 treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary and

common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful conspiracy was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that such act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

67 In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one

Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said consiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company,
68 on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Ten-

nessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle
69 District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his, the said E. W. Connell's name as such Treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursu ance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fer-

tilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn., Dec. 6 1904"
70 and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he, the said Abram C. Read as Manager thereof offer-d to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee

Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

71 SIXTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were

severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress approved July 2, 1890, and entitled "An Act to protect
72 trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and in the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section 5440 of the Revised Statutes of the United States, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William
73 J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Wil-

liam D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the United States, to wit, to engage in a combination in restraint of commerce among the several States, namely, a combination in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, and did then and there so conspire to commit the aforesaid offense by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy, and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices; that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to
74 make sales and deliveries of such merchandise through itself and its subsidiary — amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment,

as aforesaid; and on the other hand, each of said corporation defendants and firms which, through itself and its subsidiary companies, should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful combination was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid, the corporation defendants and individual defendants, hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that such act was done in pur-
75 suance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and

four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at West
76 Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid,

consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchan-
77 dise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Arndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day

and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D.
78 Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec. 6 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes

and Bro.," at Oxford, Alabama, that certain letter of the date
79 set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley, By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did conspire to commit an offense against the United States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

ABRAM M. TILLMAN,
United States Attorney.

(Endorsed as follows:) No. 963. United States Circuit Court, Middle District of Tennessee. The United States *vs.* Virginia-Carolina Chemical Company *et als.*

Indictment for violating Act of Congress approved July 2, 1890, and entitled "An Act to Protect Trade and Commerce against unlawful restraints and monopolies," and Section 5440 R. S. U. S.

A True Bill. Robert Q. Stewart, Foreman of the Grand Jury.

Names of Witnesses Sworn and Examined Before the Grand Jury.

J. C. Adams, Henry E. Ahern, Lee Ashcraft, Eugene Atkinson, N. E. Barker, W. F. Barrett, James C. Beck, J. M. Berry, W. W. Bird, L. W. Botts, Clarence Braden, S. D. Bramlitt, A. P. Brantley,
B. D. Brantley, Dewitt Brown, H. C. Brown, Arthur Bussey,
80 Hezekiah Bussey, E. J. Blume, James A. Boyd, William F. Burns, Oscar Bright, J. W. Carter, B. G. Clark, C. W. Comes, E. W. Connell, Charles Earle Currie, R. L. Davis, Joseph Dence, W. P. Diehl, A. M. Dobbs, John V. Dobson, C. H. Drayton, W. L. Dumas, J. B. Duncan, S. Eastland, T. B. Edwards, Culpepper Exum, H. C. Fischer, J. B. Fiser, Albert French, C. A. Gambrill, A. H. George, John E. Gibbs, William Gilchrist, James M. Goldsmith, A. A. Green, E. P. Grice, W. A. Hansel, G. A. Harrington, H. J. Harby, Allen Hardison, L. C. Hayne, J. L. Haynes, D. P. Haynes, R. W. Henderson, P. W. Hendricks, E. R. Hodgson, junior, E. R. Hodgson, senior, J. L. Horn, W. E. Hudson, T. J. Hunt, R. H. John-

ston, T. V. Kessler, E. M. Kirk, Henry Kirn, H. L. Law, Alexander Leslie, J. A. Lindsey, W. Hampton Logan, Harry Luck, John A. Lewis, W. F. McKenzie, Robert F. Maddox, H. W. Malloy, E. R. Manning, H. L. Milligan, J. Allen Moore, M. B. Neece, W. J. Oliver, E. Thomas Orgain, D. B. Osborne, Every M. Paget, W. W. Perkins, Dr. J. D. Plunkett, F. B. Pope, William Price, Charles Rainey, Frederick Rayfield, Isaac W. Read, W. A. Reynolds, I. T. Rhea, W. E. Richards, H. A. Rogers, V. N. Roadstrum, W. G. Sadler, G. W. Sanders, E. M. Sentelle, W. McR. Smith, R. G. Sparrow, J. F. Stackley, C. A. Steifelmeyer, S. E. Stewart, W. B. Stratford, John Sutterer, E. R. Taber, Frank E. Taylor, W. B. Taylor, W. D. Tharin, J. R. Timmerman, J. W. Todd, S. W. Travers, George H. Tucker, E. Van Winkle, J. T. Welch, O. C. Wiley, C. H. Willcox, T. B. Williams, Benjamin L. Willingham, W. S. Wight, E. G. Woodling.

Filed 11:30 A. M., May 25, 1906. H. M. Doak, Clerk, by E. L. Doak, Deputy Clerk. Abram M. Tillman, U. S. Atty.

I, H. M. Doak, Clerk of the Circuit Court of the United States in and for the Middle District of Tennessee, hereby certify that the foregoing is a true, perfect, and complete copy of an indictment filed as thereupon endorsed, etc. In witness whereof I have hereunto signed my name and affixed the seal of said court, at my office, this the 26th day of May, 1906.

[SEAL OF COURT.] H. M. DOAK, *Clerk.*

81 *Order Awarding Writs of Habeas Corpus and Certiorari.*

Filed July 14th, 1906.

In the Matter of the Petition of WILLIAM DEC. KESSLER for Writs of *Habeas Corpus* and Certiorari.

WILLIAM DEC. KESSLER, Petitioner,

versus

MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

Let the writ of *habeas corpus*, in due form of law, as prayed for in the within petition be issued directed to Morgan Treat, United States Marshal for the Eastern District of Virginia, commanding him forthwith to make return of said writ and to produce the body of said petitioner, William DeC. Kessler, before this Court, to be dealt with according to law; and that the writ of certiorari as prayed for in said petition be issued and made returnable forthwith.

Richmond, Va., July 14th, 1906.

NATHAN GOFF,
Presiding Circuit Judge, April Term, 1906.

Writ of Habeas Corpus.

82 UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

To Morgan Treat, United States Marshal for the Eastern District of Virginia, or any of his deputies:

We command you that the body of William DeC. Kessler in your custody detained, as it is said, together with the day and cause of his caption and detention, you safely have before our Circuit Court of the United States, within and for the District aforesaid, forthwith, to do and receive all and singular those things which the said Circuit Court of the United States, within and for the District aforesaid, shall then and there consider of him in this behalf; and have you then and there this writ.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond, this 14th day of July, in the year of our Lord one thousand nine hundred and six, and of our Independence the 131st year.

[Seal United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Cerk of the Circuit Court of the United States for the Eastern District of Virginia.

Marshal's Return.

To the Circuit Court of the United States for the Eastern District of Virginia:

Morgan Treat, United States Marshal for the said Eastern District of Virginia, to whom the annexed writ is directed, has now before the court the body of William DeC. Kessler therein named, as thereby commanded. And I certify that the cause of the detention of the said William DeC. Kessler is a warrant directed to me and issued by the Honorable Edmund Waddill, Jr., Judge, of the said Eastern
83 District of Virginia, on July 14, 1906, under the provisions of section 1014 of the Revised Statutes of the United States, commanding the imprisonment and removal of the said William DeC. Kessler to the Middle District of Tennessee for trial in the Circuit Court of the United States for said last mentioned district upon a certain indictment found in said last mentioned court against him, the said William DeC. Kessler and others, a copy of which warrant of removal is set out in the petition of the said William DeC. Kessler herein; and that a full, true and correct statement of all the proceedings before the said Judge upon the application for the arrest and commitment of the said William DeC. Kessler and his removal to said Middle District of Tennessee for trial is contained and set forth in the statement or order of said Judge, a copy of which is set forth in section 7 of the said William DeC. Kessler's petition and in the documents made a part thereof and therein referred to.

MORGAN TREAT,
U. S. Marshal for the Eastern District of Virginia.

Dated this 14th day of July, A. D. 1906.

Writ of Certiorari.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

The President of the United States of America to the Judge of the District Court of the United States for the Eastern District of Virginia:

84 We being informed that there is now pending before you a suit in which the United States of America is plaintiff and William DeC. Kessler is defendant; and we being willing, for certain reasons, that the said case and the record and proceedings therein should be certified by the Judge of the District Court of the United States for the Eastern District of Virginia and removed into the Circuit Court of the United States for the Eastern District of Virginia, sitting at Richmond, Virginia;

We do hereby command you forthwith that you send forthwith to the said Circuit Court of the United States for the Eastern District of Virginia, as aforesaid, the record and proceedings in said case, so that the said Circuit Court of the United States for the Eastern District of Virginia may act thereon as of right and according to law ought to be done.

Witness, The Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond, this 11th day of July, in the year of our Lord one thousand nine hundred and six, and of our Independence the 131st —.

[Seal United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Return of United States District Judge.

The Clerk of the United States District Court is hereby directed to deliver to the Judges of the United States Circuit Court within and for the Eastern District of Virginia the record and proceedings mentioned in the within writ.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

Richmond, Va., July 14", 1906.

85 *Transcript of Proceedings Before Honorable Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia.*

The following proceedings were had before Honorable Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia, at Richmond, Virginia, on the 14th day of July, 1906.

THE UNITED STATES
versus
WILLIAM DEC. KESSLER.

Writ of Certiorari.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

The President of the United States of America to the Judge of the District Court of the United States for the Eastern District of Virginia:

We being informed that there is now pending before you a suit in which the United States of America is plaintiff and William DeC. Kessler is defendant; and we being willing, for certain rea-
86 sons, that the said case and the record and proceedings therein should be certified by the Judge of the District Court of the United States for the Eastern District of Virginia and removed into the Circuit Court of the United States for the Eastern District of Virginia, sitting at Richmond, Virginia.

We do hereby command you forthwith that you send forthwith to the said Circuit Court of the United States for the Eastern District of Virginia, as aforesaid, the record and proceedings in said case, so that the said Circuit Court of the United States for the Eastern District of Virginia may act thereon as of right and according to law ought to be done.

Witness, The Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond, this 14th day of July, in the year of our Lord one thousand nine hundred and six, and of our Independence the 131st year.

[Seal of United States Circuit Court.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Return of United States District Judge.

The Clerk of the United States District Court is hereby directed to deliver to the Judges of the United States Circuit Court within and for the Eastern District of Virginia the record and proceedings mentioned in the within writ.

EDMUND WADDILL, JR.,
U. S. District Judge.

Richmond, Va., July 14", 1906.

87 *Complaint.*

Filed July 14th, 1906.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

On this 14th day of July, A. D. 1906, at the City of Richmond, in the said District, before the Hon. Edmund Waddill, Jr., Judge of the District Court of the United States of America for the said

District, comes Morgan Treat, United States Marshal in and for the said District, and upon his oath complains and says: that he has good cause to believe and does firmly believe that William DeC. Kessler stands indicted by the Grand Jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said William DeC. Kessler on the eighth day of July in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, being during said period Secretary and Treasurer of the Goulding Fertilizer Company Limited, a corporation existing under and by the laws of Great Britain & Ireland, did in the said Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said William DeC. Kessler did unlawfully conspire with divers other persons and
88 corporations to commit an offense against the United States, to-wit, the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States, all as more fully set out in an indictment filed in the said Circuit Court of the United States in and for the Middle District of Tennessee on May 25, 1906, in cause No. 963, entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," a certified copy of which indictment is hereto attached and made a part of this complaint; and complainant therefore charges that the said William DeC. Kessler did commit the said offenses against the United States in manner and form as set forth in said indictment.

Complainant furthermore avers upon information and belief that said William DeC. Kessler is now believed to be within the Eastern District of Virginia.

Wherefore this complainant prays that the said William DeC. Kessler may be arrested and imprisoned and removed or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee, and further dealt with according to law.

MORGAN TREAT, *Marshal.*

Subscribed and sworn to before me by the above named Morgan Treat the day and year first above written.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

Richmond, Va., July 14, 1906.

89 *Certified Copy of Indictment.*

In the Circuit Court of the United States of America for the Middle District of Tennessee, of the April Term, in the Year of Our Lord Nineteen Hundred and Six.

MIDDLE DISTRICT OF TENNESSEE, *sct:*

The grand jurors for the United States of America, inquiring for the Middle District of Tennessee, upon their oath present, that before and on the eighth day of July, in the year of our Lord nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year of our Lord nineteen hundred and five, the following named corporations, respectively organized and existing under and authorized by the laws of the several States and of the foreign country here named in connection with them, and hereafter in this indictment called corporation defendants, to wit, the Virginia-Carolina Chemical Company, of New Jersey, Armour and Company, of Illinois, the Acme Manufacturing Company, of North Carolina, the Alabama Chemical Company, of New Jersey, the Anderson Phosphate & Oil Company, of South Carolina, the Ashepoo Fertilizer Company, of South Carolina, the Blackshear Manufacturing Company, of Georgia, the Etiwan Fertilizer Company, of South Carolina, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, The Furman Farm Improvement Company, of Georgia, the Goulding Fertilizer Company, Limited, of Great Britain and Ireland, The Goulding Fertilizer Company, of Florida, the Gulfport Cotton Oil, Fertilizer & Manufacturing Company, of Georgia, the Home Mixture Guano Company, of Georgia, the Jackson Fertilizer Company, of Mississippi, the Marietta Fertilizer Company, of Georgia, the Meridian Fertilizer Factory, of Mississippi, the National Fertilizer Company, of Tennessee, the New Orleans Acid and Fertilizer Company, of New Jersey, the Old Dominion Guano Company, of Georgia, the Planters Chemical Company, of Alabama, the Read Phosphate Com-
90 pany, of West Virginia, the F. S. Royster Guano Company, of Virginia, the Savannah Guano Company, of Georgia, the Southern States Phosphate and Fertilizer Company, of Georgia, the Standard Chemical & Oil Company, of Alabama, the Standard Guano and Chemical Manufacturing Company, of Louisiana, Swift & Company, of Illinois, the Tennessee Chemical Company, of Tennessee, and the Tennessee Valley Fertilizer Company, of Alabama, and certain firms, to wit, the firm of A. D. Adair and McCarty Brothers and the firm of Wilcox, Ives & Company, did carry on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereafter in this indictment called the States of the conspiracy, as wholesale dealers in complete and alkaline fertilizers and in acid phosphates, nitrates, and potash salts suitable for fertilizers, which then were useful and valuable articles of merchandise, indispensable for use on the soil of the said States of the conspiracy in order that the staple

crops of those States might be raised therefrom; that the following named persons, hereafter in this indictment called individual defendants, to wit, Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, of the said Virginia-Carolina Chemical Company, and J. Rice Smith, agent and manager of the said Virginia-Carolina Chemical Company, and president of the Georgia Chemical Works hereinafter mentioned, Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, Fred G. Brown, president and treasurer of the said Anderson Phosphate & Oil Company, Frank Burbidge, president, and William J. McCormack, treasurer of the said Etiwan Fertilizer Company, George Braden, president of the said Federal Chemical Company, of Delaware, and also of the said Federal Chemical Company, of Kentucky, Augustus D. Adair and James D. McCarty, officers and agents of the said Furman Farm Improvement Company and members of the said firm of A. D. Adair and McCarty Brothers, William DeC. Kessler, secretary and treasurer of the said Goulding Fertilizer Company, Limited, James G. Tinsley, president of the said Marietta Fertilizer Company and vice-president of the said Tennessee Chemical Company, William D. Rhea, general manager of the said National Fertilizer Company, William L. Peel, president of the said Old Dominion Guano Company, Abram C. Read, vice-president and general manager, and Isaac Mayo Read, agent, of the said Read Phosphate Company, Frank S. Royster, president, and Charles F. Burroughs, vice-
91 president, of the said F. S. Royster Guano Company, A. J. Ives, whose Christian name is to the said grand jurors unknown, secretary and treasurer of the said Savannah Guano Company and a member of the said firm of Wilcox, Ives & Company, T. Porter Fleming, vice-president of the said Southern States Phosphate and Fertilizer Company, and T. Garland Tinsley, president and treasurer of the said Tennessee Chemical Company, in their said several capacities as officers, managers, agents, and attorneys of the said corporation defendants and members of the said firms, and on behalf of those corporations and firms, during the period of time in this indictment first aforesaid, did carry on the business aforesaid; that in so carrying on the said business the said defendants, that is to say, the said corporation and individual defendants, did sell and deliver large quantities of the said merchandise within the limits of the said States of the conspiracy from the respective places of business of the said corporation defendants and the said firms, located at different points within those States, to retail dealers in and consumers of such merchandise, in such States respectively, and did also ship large quan-ties of the same from their respective places of business, located in the said States of the conspiracy and also in the States of Virginia, Illinois, and Kentucky, into and through other of the said States than those in which their said places of business were located; that in so carrying on the said business and shipping the said merchandise from one of the said States into and through another or others thereof, the said defendants, during the period

aforesaid, were engaged in trade and commerce among the States of this Union within the meaning of the Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in so carrying on the said business, trade and commerce, the said Virginia-Carolina Chemical Company and the said Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, and J. Rice Smith, agent and manager, of the said Virginia-Carolina Chemical Company, did make use of and operate a portion of their said business, trade and commerce through each of certain other corporations, to wit, the American Fertilizing Company, of Virginia, the Birmingham Fertilizer Company, of Alabama, the Coweta Fertilizer Company of Georgia, the Georgia Chemical Works, of Georgia, the Navassa Guano Company, of North Carolina, of either the whole or a majority of the capital stock of which said corporations respect-
92 ively the said Virginia-Carolina Chemical Company was the owner; that in so carrying on the said business, trade and commerce, the said Armour and Company and the said Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, did make use of and operate all of their said business, trade and commerce through a certain other corporation called the Tuscarora Fertilizer Company, of New Jersey, and a certain trade name, to wit, the trade name of Armour Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Furman Farm Improvement Company and the said firm of A. D. Adair and McCarty Brothers did make use of and operate a portion of their said business trade, and commerce under the trade name of Chickamauga Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Federal Chemical Company, of Delaware, and the said Federal Chemical Company of Kentucky, did make use of, and operate a portion of their said business, trade and commerce through, the names of Century Phosphate Company, Fox Chemical Company, Branch, Globe Fertilizer Company, Branch, and Tennessee Phosphate Company; that in so carrying on the said business, trade and commerce, the said National Fertilizer Company did make use of, and operate a portion of its said business, trade and commerce through, the corporate name of American Guano Company and the trade name of Nashville Guano Company; that in so carrying on the said business, trade and commerce, the said Read Phosphate Company did make use of, and operate a portion of its said business, trade and commerce through the corporate name of Empire Guano Company; that in so carrying on the said business, trade and commerce, the said F. S. Royster Guano Company did make use of, and operate a portion of its said business, trade and commerce through the trade name of Atlantic Chemical Company and the corporate name of Columbia Guano Company; that in so carrying on the said business, trade and commerce, the said Swift and Company did make

use of, and operate the whole of its said business, trade and commerce through, the trade name of Swift Fertilizer Works; and that in so carrying on the said business, trade and commerce, the said Tennessee Chemical Company did make use of, and operate a portion of its said business, trade and commerce through, the trade name of Continental Fertilizer Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that of the total volume of such business, trade and commerce then so being carried on by the said defendants and their competitors, the said defendants together had and controlled
93 the principal part, that is to say, ninety per centum thereof; and that because the said corporation defendants and the said firms were in fact separate and distinct from each other, they should have conducted their interstate trade and commerce strictly in competition with each other, during the said period, and then would have so conducted the same but for the unlawful conspiracy in restraint of the said business, trade and commerce in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, at and within the said Middle District of Tennessee, in violation of the provisions of said section one of the said Act of Congress, unlawfully did knowingly engage in a conspiracy in restraint of the said business, trade and commerce, so then being carried on by them in the manner aforesaid, whereby the said business, trade and commerce was restrained in the several ways and by the several means now here set forth and described, that is to say:

Competition as to the prices at which the said merchandise was sold and delivered by the said corporation defendants and the said firms in the said States of the conspiracy, which before the period of time in this indictment first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was prevented and destroyed by the said defendant from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them styled "current, reasonable market prices," for the said merchandise so sold and delivered by the said corporation defendants and the said firms in those States, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so fixed and caused to be fixed; which said uniform and non-competitive prices were prices greatly in excess of the prices which but for the said unlawful conspiracy would at such times have prevailed for the said merchandise in the said business, trade and commerce, and were prices therefore unreasonable, and were a tax on the people of the said States of the said conspiracy amounting to a large sum of money, to wit, four million dollars, annually during the continuance of the same.

For and on account of such quantity of the said merchandise as was sold and delivered as aforesaid by any of such corporation de-

fendants or of such firms, in excess of amounts allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and de-
94 livered in excess, was, by the corporation defendants and firms so selling and delivering the same, paid into a common fund, held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, compensated, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as sold and delivered less than the amounts so allotted to them respectively, so it was not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy that each of the said corporation defendants and of the said firms also paid into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be the absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm, in disposing of its said allotment in carrying on the said business, trade and commerce, on its part faithfully should exercise every reasonable effort and due business diligence to maintain the prices so fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its said excess sales, in which case an equal amount was returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also made uniform and non-competitive as between all of the said corporation defendants and the said firms, in the said business, trade and commerce, among the said States of the conspiracy.

As a convenient intermediary and common agent between the said corporation defendants and the said firms, respectively and as a means of securing their co-operation in carrying out the said unlawful conspiracy, the said defendants made use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company, Limited, was also allowed and required to collect, hold, use and distribute the said fund aris-
95 ing from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of September, in the year nineteen hundred and three, during the period of time aforesaid, at and within the City of New York, in the State of New York, unlawfully did knowingly, deposit with the Continental Trust Company, of the said City of New York, the sum of twenty-six thousand dollars, in connection with the purchase of by the said trust company on behalf of the said Virginia-Carolina Chemical Company, and in the name of one Montrose Stuart, a clerk in the office of the said trust company, of twenty-six hundred shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Samuel T. Morgan, on the seventh day of October, in the same year nineteen hundred and three, and during the period of time aforesaid, at and within the said city of New York, in the State of New York, unlawfully did deliver to the said William DeC. Kessler, Vice-President of the said Colonial Development Company, Limited, three checks drawn by the said Virginia-Carolina Chemical Company, one upon the National City Bank, of New York City aforesaid, for eighty thousand dollars, another on the Bank of America, of New York City aforesaid, for fifty thousand dollars, and the other on the National Park Bank, of New York City aforesaid, for thirty-five thousand and four hundred and sixty-eight dollars, aggregating one hundred and sixty-five thousand and four hundred and sixty-eight dollars, as and for a payment, by the said Virginia-Carolina Chemical Company, to the said Colonial Development Company, Limited, of twenty cents a ton on its allotment under the said unlawful conspiracy; he the said Samuel T. Morgan, when and where he so as aforesaid delivered the said checks to the said William DeC. Kessler, well knowing the character and purpose of the same, and well knowing that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as acts on their parts respectively of engaging in the same, the said Samuel T. Morgan,
Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox,
96 J. Rice Smith, Austin B. Carpenter, Charles G. Wilson,
Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, on the seventeenth day of September, in the year nineteen hundred and three, and during the period aforesaid, at the said City of New York, in the said State of New York, unlawfully did meet together to discuss and further the object of the said unlawful conspiracy; they the said Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy,

Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, when and where they so as aforesaid met together, each well knowing the character and purpose of the said meeting, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank E. Wilcox, on the first day of November, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did deliver to one W. W. Perkins, Secretary of the said American Fertilizing Company, a certain document, too voluminous to be here set forth, stating certain prices and terms of sale, fixed in pursuance of the said unlawful conspiracy, for the said fertilizer merchandise, in the States of North Carolina, South Carolina, Georgia, Florida, Alabama and Tennessee, for the spring season of the year nineteen hundred and four; he the said Frank E. Wilcox at the time and place when and where he so as aforesaid delivered the said document to the said W. W. Perkins, well knowing the character of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, and during the period of time aforesaid, at the town of Decherd, in the said Middle District of Tennessee, by and through one
97 F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, and during the period aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to

furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, and during the period of time aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at the City of Nashville, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, a certain notice of shipment, partly written and partly printed, in the words and figures following, that is to say:

"The Armour Fertilizer Works
Owned and operated by
Armour & Company.
Prudential Building,
Atlanta, Ga.

Duplicate.
To be Mailed with Bill of
Lading to Customer.

No. 612
March 10", 1905.

98 We have this day shipped from Nashville, Tenn. storage
To Bramlitt Hdw Co.
Corinth, Miss.
Charge to S. D. Bramlitt. Address same.

No. Bags.	Weight of bags.	Brand	Tons.
400	100	King Cotton 8.2.2	20

Order No. 4613.
Bill of lading herewith. Invoice will be mailed from Chicago.
Above quantities shipped 3 10 1905. Freight Terms.....
Car No. 13619. Via L. & N.
Charges prepaid $48.00.

THE ARMOUR FERTILIZER WORKS,
Per ALEX. LESLIE."

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the

said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Austin B. Carpenter, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Assistant Secretary of the said Colonial Development Company, unlawfully did sign his name, to wit, "A. B. Carpenter, Ass't Sec'y" on the face of a certain stock certificate, to wit, certificate No. 28, showing the ownership by one Thomas M. Green of fifty-one shares of the capital stock of the said Colonial Development Company; he the said Austin B. Carpenter, at the time and
99 place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his said act to be done in pursuance and to effect the object of the said conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles H. MacDowell, on the twelfth day of January, in the year nineteen hundred and five, and during the period of time aforesaid, at and within the city of Chicago, in the State of Illinois, unlawfully did sign his name, to-wit, "C. H. MacDowell," under the name of the Armour Fertilizer Works, and after the word "by" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Armour and Company, under the trade name of "Armour Fertilizer Works," offered to furnish and deliver at Corinth, in the State of Mississippi to one S. D. Bramlitt, twenty tons of the fertilizer merchandise aforesaid; he the said Charles H. MacDowell, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Acme Manufacturing Company, on the first day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the city of Wil-

mington, in the State of North Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of six hundred and twenty dollars for sixty-two shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Alabama Chemical Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Montgomery, in the State of Alabama, unlawfully did knowingly deliver its certain check drawn upon the Merchants and Planters-Farley National Bank, Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of William DeC. Kessler, as payment for forty-two shares of the capital stock of the said Colonial Development Company, Limited;

100 And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Anderson Phosphate and Oil Company, on the twenty-ninth day of August, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Anderson, in the State of South Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of five hundred and eighty dollars for fifty-eight shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly buy from the Carolina Savings Bank, Charleston, South Carolina, a draft upon the Citizens National Bank, of New York City, for the payment of the sum of seven thousand nine hundred and forty-nine dollars and forty-three cents to the order of one Frank E. Taylor, Vice-President and General Manager of the said Ashepoo Fertilizer Company;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and *and* during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly cause the said Frank E. Taylor to endorse the check last above mentioned payable to the order of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Blackshear Manufacturing Company, on the seventeenth day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Blackshear, in the State of Georgia, unlawfully did know-

ingly deliver to the Atlantic Coast Line Railroad Company six tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of E. J. Blume & Company, at Live Oak, in the State of Florida;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Etiwan Fertilizer Company, on the fourteenth day of December, in the year nineteen hundred
101 and three, and during the period of time aforesaid, at and within the town of Cairo, in the State of Georgia, by and through one P. H. Seabrook, its agent, unlawfully did knowingly offer and agree to furnish and deliver to the firm of Wight Brothers, of Cairo aforesaid, thirty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank Burbidge, on the first day of July, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Charleston, in the State of South Carolina, having then and there in his hands a certain check, dated the thirtieth day of June, in the same year nineteen hundred and four, drawn by the said Alabama Chemical Company upon the Continental National Bank of Chicago, for the payment of eleven hundred and forty-two dollars and ninety-seven cents to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Pay to order of People's National Bank, Colonial Development Co., Ltd., F. Burbidge, Pres."; he the said Frank Burbidge then and there, to wit, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William J. McCormack, on the ninth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, having then and there in his hands a certain check dated the fifth day of September, in the same year, drawn by the said New Orleans Acid & Fertilizer Company, upon the Louisiana National Bank of New Orleans, for the payment of seven hundred and fifty dollars to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Colonial Developm't Co., Frank Burbidge, Sec. & Treas., per Wm. J. McCormack"; he the said William J. McCormack, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy,

and to effect the object of the same, and as an act on its part of engaging in the same, the said Federal Chemical Company, of
102 Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the said State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, and during the period of time aforesaid, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did
103 knowingly cause to be delivered, to the said firm of Fiser, Orndorff & Williams, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Goulding Fertilizer Company, Limited, on the twenty-fifth day of November, in the year nineteen

hundred and three, and during the period of time aforesaid, at and within the town of Cullman, in the State of Alabama, by and through one W. E. Craig, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one John Sutterer, at Cullman aforesaid, three hundred and seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the sixth day of September, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Pensacola, in the State of Florida, having then and there in his hands a certain check, dated the fifth day of September, in the same year nineteen hundred and three, drawn by the said Alabama Chemical Company upon Merchandise Merchants and Planters-Farley National Bank of Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of W. DeC. Kessler, unlawfully did sign his name, to wit, "W. DeC. Kessler," upon the back of the said check next below the written words "Pay to the order of Colonial Development Co."; he the said William DeC. Kessler then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the back of the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the said fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Vice-President of the said Colonial Development Company, unlawfully did sign his name, to wit, "W. DeC. Kessler, V. P." on the face of the said stock certificate in the name of Thomas M. Green; he the said William DeC. Kessler, at the time and place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his act to be done in pursuance and to effect the object
104 of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Gulfport Cotton Oil Fertilizer and Manufacturing Company, on the twenty-seventh day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-four hundred dollars for and in respect of twelve thousand tons of the fertilizer merchandise aforesaid, allotted to the said Gulfport Cotton Oil, Fertilizer and Manufacturing Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy,

and to effect the object of the same, and as an act on its part of engaging in the same, the said Home Mixture Guano Company, on a day in the year nineteen hundred and three to the said grand jurors unknown, and during the period of time aforesaid, at and within the City of Columbus, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Jackson Fertilizer Company, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Jackson, in the State of Mississippi, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Marietta Fertilizer Company, on the twenty-first day of July, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by and through one L. W. Reeves, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one James A. Boyd, at Jonesboro aforesaid, seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said James G. Tinsley, on the third
105 day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Nashville, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley; he the said James G. Tinsley, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Meridian Fertilizer Factory, on the seventh day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Cullman, in the State of Alabama, by its agent E. L. Robbins, un-

lawfully did knowingly offer to furnish to C. A. Steifelmeyer one hundred and fifty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge; he the said
106 William D. Rhea, then and there, to wit, at the time and place when and where he so directed and required the said E. W. Connell to sign his name as aforesaid to the said check, well knowing the nature and contents of the said check, and that his said direction and requirement were in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid; he the said William D. Rhea then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the said document, well knowing the character of the same, and well **knowing his said act to be one done in pursuance of and to effect the** object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said New Orleans Acid & Fertilizer Company, on

the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars for seventy-five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Old Dominion Guano Company, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-six hundred and twenty dollars, for and in respect of
107 thirteen thousand one hundred tons of the fertilizer merchandise aforesaid, allotted to the said Old Dominion Guano Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William L. Peel, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did sign his name, to wit, "W. L. Peel, Prest.," to a certain check, to wit, a check drawn by the Maddox-Rucker Banking Company upon the National Park Bank, New York, for the payment of twenty-six hundred and twenty dollars to the order of the said Colonial Development Company, Limited; he the said William L. Peel, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Planters Chemical Company, on the thirtieth day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Talladega, in the State of Alabama, unlawfully did knowingly pay the said Colonial Development Company, Limited, the sum of fifty dollars for five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Read Phosphate Company, on the fifth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Hartselle, in the State of Alabama, unlawfully did knowingly offer to sell and deliver to one S. E. Stewart, at that place, forty to fifty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of en-

gaging in the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here
108 set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid; he the said Abram C. Read, then and there, to wit, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved, Nashville, Tenn. Dec. 6, 1904," and above the word "Manager," upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof, offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid; he the said Abram C. Read then and there, to wit, at the time and place when and where he so as aforesaid signed his name to the last mentioned document, well knowing the character and contents of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said F. S. Royster Guano Company, on the thirtieth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine thousand three hundred and fourteen dollars and seventy-four cents, on account of such merchandise sold and delivered by the said F. S. Royster Guano Company in excess of its allotment under the aforesaid unlawful conspiracy;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles F. Burroughs, on the
109 twenty-fifth day of March, in the year nineteen hundred and four, and during the period of time aforesaid, at and within

the City of Norfolk, in the State of Virginia, unlawfully did sign his name, to wit, "C. F. Burroughs," under the word "countersigned" and above the words "Vice-President" upon the face of a certain document, partly written and partly printed, too voluminous to be here set forth in full, wherein and whereby the said F. S. Royster Guano Company and he the said Charles F. Burroughs, as Vice-President thereof, offered to sell to one J. W. Carter, and to deliver to him at Maxton, in the State of North Carolina, ten tons of the fertilizer merchandise aforesaid; he the said Charles F. Burroughs, at the time and place when and where he so as aforesaid signed his name to the said document, well knowing the character and contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Savannah Guano Company, on the second day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did knowingly pay to the said Frank Burbidge the sum of nine hundred and forty dollars for ninety-four shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said A. J. Ives, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did sign his name, to wit, "A. J. Ives, Secty. & Treas." to a certain check, to wit, a check drawn by the Savannah Guano Company upon the Merchants National Bank, Savannah, Georgia, for the payment of three thousand one hundred and forty dollars to the order of New York Exchange; he the said A. J. Ives, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Southern States Phosphate and Fertilizer Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of the time aforesaid, at and within the City of Augusta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine hundred and sixty dollars for ninety-six shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Chemical and Oil Company, on the third day of October, in the year nineteen hundred and three,

and during the period of time aforesaid, at and within the Town of Troy, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand dollars for and in respect of one-half of forty thousand tons of the fertilizer merchandise aforesaid allotted to the said Standard Chemical and Oil Company, as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Guano and Chemical Manufacturing Company, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand seven hundred and seventy-four dollars and seventy-seven cents as a partial payment for and in respect of the fertilizer merchandise aforesaid, allotted to the said Standard Guano and Chemical Manufacturing Company, as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Swift & Company, on the first day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by its agent, J. Z. Elliott, unlawfully did knowingly offer to furnish to one W. P. Diehl thirty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

111 And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes & Bro., at Oxford, Alabama, a certain letter of the tenor following, to wit:

T. G. Tinsley, Pres't & Treas. Allen Hardison, Sec'y.

Tennessee Chemical Company, Manufacturers and Importers of Ox Fertilizers.

NASHVILLE, TENNESSEE, *May* 17, '05.

Messrs. D. P. Haynes & Bro., Oxford, Ala.

DEAR SIRS:—I am in receipt of your favor of the 16th and beg to state we could not allow any discount further than the 5% for cash settlement. We will be glad to have you settle in cash on this basis if you desire to do so, but are sorry to state we are not in a position to offer you any further discount.

Yours truly, T. G. TINSLEY, *President;*

he the said T. Garland Tinsley then and there, to wit, at the time and place when and where he so as aforesaid caused the said letter to be written and sent as aforesaid, well knowing that the same was so written and sent in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part in engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Company, James G. Tinsley. By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon the Mercantile National Bank, New York, for the payment of
112 sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley; he the said T. Garland Tinsley, at the same time and place when and where he so as aforesaid wrote the said endorsement on the back of the said check, well knowing the contents of the same, and that his said act was done in pursuance of and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Valley Fertilizer Company, on the second day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Florence, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars, as a partial payment for and in respect of fertilizer merchandise aforesaid, allotted to the said Tennessee Valley Fertilizer Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on their parts respectively, of engaging in the same, the said Frank Burbidge,

Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson, during the period of time aforesaid, at the City of New York, in the State of New York, the City of Washington, in the District of Columbia, Old Point Comfort and Hot Springs, in the State of Virginia, St. Augustine, in the State of Florida, and French Lick Springs, in the State of Indiana, unlawfully did as officers, directors and attorney of the said Colonial Development Company, Limited, meet together for the purpose of discussing and attending to the affairs of the said Colonial Development Company, Limited; they the said Frank Burbidge, Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson when and where they so met together aforesaid, well knowing the purpose of such meetings, and well knowing their acts in the premises to be acts in pursuance and to effect the object of the said unlawful conspiracy, and that the same were done as acts on their parts respectively of engaging in the said unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, during the period of time aforesaid, and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form aforesaid, unlawfully did engage in a conspiracy in restraint of trade and commerce among the several States; Against the
113 peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

SECOND COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the first count described, and were so engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord, nineteen hundred and three at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the grand jurors unknown, and engage in a conspiracy among themselves and with such other

unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid; which said unlawful conspiracy in this count mentioned then and there was a conspiracy for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described; that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing and causing to be fixed, uniform and non-competitive prices, by them to be styled "current, reason-
114 able market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such times prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum ther-of during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be the

absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on the said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its excess sales, in which case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their co-operation in carrying out the said unlawful conspiracy, the said defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, and as being acts on the part of the said corporation and individual defendants respectively of engaging in that conspiracy, are now here in this count charged to be acts by the same corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned, and to have been acts on the part of the said corporation and individual defendants respectively of engaging in the last-named unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the

said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of trade and commerce among the several States;
116 against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

THIRD COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the said first count described, and so were engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the said United States, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the said United States, to wit, the offense of engaging in a combination, among themselves and with such other unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid, which said unlawful conspiracy in this count mentioned then and there was a conspiracy to engage in a combination for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and com-
117 merce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them to be styled "current,

reasonable market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such time prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful combination and ninety per centum thereof during the second year; it being a further element of the said unlawful combination in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be — absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on the said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its excess sales, in which
118 case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their cooperation in carrying out the said unlawful combination, the said

defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful combination; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, are now here in this count charged to be acts by the said corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a con-
119 spiracy to commit an offense against the said United States;
Against the peace and dignity of the said *said* United States; *Against the peace and dignity of the said United States*, and contrary to the form of the statute in such case made and provided.

Fourth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in

connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State, but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the aforesaid business and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section one of the said Act of Congress, approved July 2, 1890, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Ala-

bama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company,
121 and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly engage in a conspiracy in restraint of commerce among the several States, to wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, whereby the said commerce was restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise which were maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the period of such unlawful conspiracy, and greatly in excess of those prices which would have otherwise prevailed in the said States during the period of such unlawful conspiracy, and were therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby earnest money was given to secure the maintenance of such prices and compensation was made to those losing volume of business by reason of maintaining such prices, that is to say:

There was from time to time allotted to each of said corporation

defendants and firms an amount of tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporations defendants and firms paid into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sums becoming due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which faithfully maintained such uniform and non-competitive prices and failed to make sales
122 and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but sold and delivered through itself and its subsidiary companies a minimum amount thereof required as a guarantee of good faith, received from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid fell short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies made such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, as a penalty upon such excess sales, paid into such common fund like amounts per ton on the said respective kinds of fertilizers, divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means whereby said unlawful conspiracy was effected, a corporation of Ontario, Canada, whose stock was apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was the common fund aforesaid into which was paid the earnest money and penalties on excess sales aforesaid, and from which was paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which the same was operated and directed.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that within the period aforesaid of said unlawful conspiracy in this count of this indictment mentioned, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and did do and perform such acts as acts on their respective parts of engaging in the said unlawful conspiracy in this count of this indictment mentioned, and that each of such defendants at the time and place when

and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant- respectively, then and there well knew the character of such act and that such
123 act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, and as an act on the part of such defendant in engaging in the same, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year, nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the
124 tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to

Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit,
126 "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawul conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec. 6, 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abraham C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P.
127 Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said corporation and individual defendants, during the period of time aforesaid, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

FIFTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen

hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the
128 other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so

carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, approved July 2, 1890, the said corporation de-
129 fendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, and engage in a conspiracy among themselves and with such other unknown corporations and persons, in restraint of commerce among the several States, to-wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid by which unlawful conspiracy said commerce was to be restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the

various points of delivery in the said States of the conspiracy,
130 which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy, and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices, that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to make sales and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales as aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants
and firms and paid for by them at ten dollars a share; whose
131 treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary

and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful conspiracy was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that such act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

132 In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Dercherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one

Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesand, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company,
133 on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of

Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District
134 of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his, the said E. W. Connell's name as such Treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fer-

tilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tenneess, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn., Dec. 6 1904" and
135 above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for

the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

136 SIXTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United

States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An
137 Act to protect trade and commerce against unlawful restraints and monopolies"; that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorneys of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and in the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section 5440 of the Revised Statutes of the United States, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack,
138 George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Roys-

ter, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the United States, to wit, to engage in a combination in restraint of commerce among the several States, namely, a combination in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, and did then and there so conspire to commit the aforesaid offense by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy; and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices; that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to
139 make sales and deliveries of such merchandise through itself and its subsidiary — amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation

defendants and firms which, through itself and its subsidiary companies, should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful combination was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that
140 such act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the

object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at
141 West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and

within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchan-
142 dise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Arndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee,

unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Man-
143 ager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec 6 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid. in the said Middle District of Tennessee,

unlawfully did cause to be written and sent by mail to "D. P. Haynes and Bro.," at Oxford, Alabama, that certain letter of the date
144 set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley, By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did conspire to commit an offense against the United States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

ABRAM M. TILLMAN,
United States Attorney.

(Endorsed as follows:) No. 963. United States Circuit Court, Middle District of Tennessee. *The United States vs. Virginia-Carolina Chemical Company et als.*

Indictment for violating Act of Congress approved July 2, 1890, and entitled "An Act to Protect Trade and Commerce against unlawful restraints and monopolies," and Section 5440 R. S. U. S.

A True Bill. Robert Q. Stewart, Foreman of the Grand Jury.

Names of Witnesses Sworn and Examined Before the Grand Jury.

J. C. Adams, Henry E. Ahern, Lee Ashcraft, Eugene Atkinson, N. E. Barker, W. F. Barrett, James C. Beck, J. M. Berry, W. W. Bird, L. W. Botts, Clarence Braden, S. D. Bramlitt, A. P. Brantley, B. D. Brantley, Dewitt Brown, H. C. Brown, Arthur Bussey,
145 Hezekiah Bussey, E. J. Blume, James A. Boyd, William F. Burns, Oscar Bright, J. W. Carter, B. G. Clark, C. W. Comes, E. W. Connell, Charles Earle Currie, R. L. Davis, Joseph Denee, W. P. Diehl, A. M. Dobbs, John V. Dobson, C. H. Drayton, W. L. Dumas, J. B. Duncan, S. Eastland, T. B. Edwards, Culpepper Exum, H. C. Fischer, J. B. Fiser, Albert French, C. A. Gambrill, A. H. George, John E. Gibbs, William Gilchrist, James M. Goldsmith, A. A. Green, E. P. Grice, W. A. Hansell, G. A. Harrington, H. J. Harby, Allen Hardison, L. C. Hayne, J. L. Haynes, D. P. Haynes, R. W. Henderson, P. W. Hendricks, E. R. Hodgson, junior, E. R.

Hodgson, senior, J. L. Horn, W. E. Hudson, T. J. Hunt, R. H. Johnston, T. V. Kessler, E. M. Kirk, Henry Kirn, H. L. Law, Alexander Leslie, J. A. Lindsey, W. Hampton Logan, Harry Luck, John A. Lewis, W. F. McKenzie, Robert F. Maddox, H. W. Malloy, E. R. Manning, H. L. Milligan, J. Allen Moore, M. B. Neece, W. J. Oliver, E. Thomas Orgain, D. B. Osborne, Every M. Paget, W. W. Perkins, Dr. J. D. Plunkett, F. B. Pope, William Price, Charles Rainey, Frederick Rayfield, Isaac W. Read, W. A. Reynolds, I. T. Rhea, W. E. Richards, H. A. Rogers, V. N. Roadstrum, W. G. Sadler, G. W. Sanders, E. M. Sentelle, W. McR. Smith, R. G. Sparrow, J. F. Stackley, C. A. Steifelmeyer, S. E. Stewart, W. B. Stratford, John Suttorer, E. R. Taber, Frank E. Taylor, W. B. Taylor, W. D. Tharin, J. R. Timmerman, J. W. Todd, S. W. Travers, George H. Tucker, E. Van Winkle, J. T. Welch, O. C. Wiley, C. H. Willcox, T. B. Williams, Benjamin L. Willingham, W. S. Wight, E. G. Woodling.

Filed 11:30 A. M., May 25, 1906. H. M. Doak, Clerk, by E. L. Doak, Deputy Clerk. Abram M. Tillman, U. S. Atty.

I, H. M. Doak, Clerk of the Circuit Court of the United States in and for the Middle District of Tennessee, hereby certify that the foregoing is a true, perfect, and complete copy of an indictment filed as thereupon endorsed, etc. In witness whereof I have hereunto signed my name and affixed the seal of said court, at my office, this the 26th day of May, 1906.

[SEAL OF COURT.] H. M. DOAK, *Clerk.*

146 *Warrant.*

UNITED STATES OF AMERICA, *Eastern District of Virginia, set:*

To the Marshal of the Eastern District of Virginia, Greeting:

Whereas complaint in writing, on oath, has been made to me charging that William DeC. Kessler of ——, stands indicted by the grand jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said William DeC. Kessler on the eighth day of July, in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, did in the Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said William DeC. Kessler did unlawfully conspire with divers other persons and corporations to commit an offense against the said United States, to-wit, the offense of

engaging in a combination in restraint of trade and commerce among the several States of the United States; and application has been made to me that the said William DeC. Kessler may be arrested and imprisoned and removed or bailed, as the case may be, for
147 *trial before the said Circuit Court of the United States for the Middle District of Tennessee;*

Now, therefore, you are hereby commanded to arrest the said William DeC. Kessler if he be found within your said District, and bring him forthwith before me at my Chambers in Richmond, in order that he may be dealt with according to law.

Richmond, July 14", 1906.

EDMUND WADDILL JR.,
U. S. District Judge.

Marshal's Return.

Pursuant to the within writ, I have taken the defendant William DeC. Kessler into custody and now have him before Hon. Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia.

July 14, 1906.

MORGAN TREAT,
United States Marshal.

Conclusions of the Court.

Filed July 14th, 1906.

THE UNITED STATES
vs.
WILLIAM DEC. KESSLER.

The conclusion reached by the Court is that in a proceeding for the arrest and removal of persons charged with a violation of the laws of the United States pursuant to section 1014 of the
148 Revised Statutes of the United States, before a United States District Judge sitting in the state of Virginia, in which state there no longer exists the right of a preliminary examination upon a criminal charge prior to the trial upon the merits, when such Judge is called upon to act as well in the matter of the apprehension of such persons, as in their removal to the jurisdiction in which they have been indicted, that upon the government's presentation of a sufficient indictment regularly found by a grand jury in a court of the United States, properly charging the commission of an offense within the district in which such indictment is found, coupled with proof of the identity of the person indicted, it is its duty to properly bail such person for appearance before the Court in which he is indicted, or cause him to be removed thereto.

Order Allowing Bail.

Filed July 14th, 1906.

UNITED STATES OF AMERICA, *Eastern District of Virginia, set:*

The within named William DeC. Kessler having been brought before me, and identified; and it appearing by a duly authenticated copy of an indictment that he stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al,*" for violation of section one of the act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United
149 States, it is ordered that the said William DeC. Kessler give bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial before said Court under the said indictment, or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee, to be there dealt with according to law.

Richmond, Va., July 14th, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the
Eastern District of Virginia.

Warrant of Imprisonment and Removal.

UNITED STATES OF AMERICA, *Eastern District of Virginia, set:*

The President of the United States to the United States Marshal of the Eastern District of Virginia, Greeting:

Whereas it has been made to appear that William DeC. Kessler stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled: "The United States *vs.* Virginia-Carolina Chemical Company *et al,*" for violation of section one of the act of congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States; and whereas the said William DeC. Kessler having been brought before me, and identified; and a certified
150 copy of said indictment furnishing probable cause to believe him to be guilty as therein charged, and whereas it was thereupon ordered by me that said defendant give bail in the sum of five thousand dollars with one or more sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial under said indictment, or that in default thereof he be imprisoned for seasonable removal to the said

Middle District of Tennessee to be there dealt with according to law; and the said defendant having failed and refused to give — as required, therefore:

You are hereby commanded in the name and by the authority of the said United States to imprison the said William DeC. Kessler in accordance with law, and that with all convenient speed you remove him hence to the said Middle District of Tennessee and there surrender him to the Marshal of that District, there to be dealt with according to law.

Richmond, Va., July 14, 1906.

EDMUND WADDILL, Jr.,
U. S. District Judge for the Eastern District of Virginia.

Marshal's Return on Foregoing Warrant.

Executed July 14, 1906 by taking the within named defendant William DeC. Kessler into custody, but before the order of removal was executed, a writ of *Habeas Corpus* was issued by order of the Circuit Court of the United States for the Eastern District of Virginia, sitting at Richmond, Virginia, commanding me to produce the body of the said William DeC. Kessler before the said United States Circuit Court in the City of Richmond, Virginia, forthwith, and in pursuance of said writ of *Habeas Corpus*, I took the said William DeC. Kessler before the United States Circuit Court as aforesaid, by which court said writ of *Habeas Corpus* was discharged and an appeal allowed to the said William DeC. Kessler to the Supreme Court of the United States, pending which appeal the said William DeC. Kessler was by order of said Circuit Court discharged from custody on bond conditioned for his appearance before said Circuit Court to abide such order as should be made by said Circuit Court upon return of the mandate of said Supreme Court of the United States upon determination of said appeal.

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Richmond, Virginia, July 14, 1906.

MORGAN TREAT,
United States Marshal.

Statement of Proceedings and Order.

Filed July 14, 1906.

THE UNITED STATES OF AMERICA, *Eastern District of Virginia:*

THE UNITED STATES
vs.
WILLIAM DeC. KESSLER.

This is an application under the provisions of Section 1014 of the United States Revised Statutes for a warrant for the removal of

William DeC. Kessler to the Middle District of Tennessee and comes before me as follows:—

152 The District Attorney for this District, together with Mr. E. T. Sanford, Counsel for the United States, presented to me a verified complaint of Morgan Treat, United States Marshal for this District, with the certified copy of an Indictment filed on May 25th, 1906, in the Circuit Court of The United States for the Middle District of Tennessee in the case of the United States *vs.* Virginia-Carolina Chemical Company and other defendants, including among such defendants the said William DeC. Kessler.

Said complaint and copy of said indictment are made parts of this order. Upon the exhibition of this Indictment and affidavit and the *ex parte* motion of counsel for the United States I made an order for the arrest of said William DeC. Kessler and his production before me.

This order was duly executed by the said Marshal, who arrested the said William DeC. Kessler and brought him before me in Richmond on this 14th day of July, 1906, as shown by his return. When the accused was so brought before me it was moved by the counsel for the United States that inasmuch as the indictment charged offenses against the United States triable in the Circuit Court of said United States for the Middle District of Tennessee, and the identity of the defendant was admitted, that an order be forthwith made for the commitment of said William DeC. Kessler for trial before said Circuit Court.

This motion was made upon the certified copy of the Indictment without any further testimony, the identity of the party arrested and brought before me as the William DeC. Kessler mentioned in the Indictment being admitted.

153 It was further stated and agreed that while the defendant William DeC. Kessler, was not a resident of the Eastern District of Virginia, he was present in this District with his counsel, and that so far as the jurisdiction in the Eastern District of Virginia was concerned, he consented to these proceedings being instituted here, and to their being conducted here with the same force and effect, and in like manner as if he was a resident of the Eastern District of Virginia; and furthermore waived the previous issuance of any bench warrant for his arrest, from the Circuit Court of the Middle District of Tennessee, if the same were necessary.

And thereupon the defendant William DeC. Kessler offered himself as witness in his own behalf, and being about to be sworn, the United States, by its counsel, thereupon objected to the witness being sworn, or to any testimony being given in rebuttal of the indictment in these proceedings on the ground that the identity of the defendant being admitted, inasmuch as the indictment on its face charges offenses against the United States committed and triable in the jurisdiction in which the defendant stands indicted, no evidence is admissible here to impeach the indictment, and the order of commitment should be made without other proof.

The defendant's counsel thereupon offered to prove by the defendant, and other witnesses then and there present, that the Circuit

Court for the Middle District *of the Middle District* of Tennessee had no jurisdiction over the person of said defendant touching the offense charged in said indictment, in that defendant and said other witnesses would —, is permitted — testify.

154 That your petitioner has not been within the State of Tennessee since 1900, except since the grand jury was empanelled except perhaps in transit by rail which found the said indictment and that neither he, nor the said company of which he is an officer ever at any time sold or delivered or offered to sell or deliver, or furnished or offered to furnish or ship any fertilizer merchandise or any other merchandise either in or into or out or out of the State of Tennessee, and that neither he nor his said company ever entered into any conspiracy in restraint of interstate trade, business or commerce in or within the limits of the State of Tennessee; and that he never directly or indirectly at any time or place entered into any conspiracy alleged and set forth in the indictment and that he never knew of or assented to any of the acts or things which it is averred in the indictment were done or committed by any of his co-defendants within the limits of the State of Tennessee, and also then and there offered to prove the same facts by other witnesses then present.

Nor has the defendant done, or performed, or been engaged in, or a party to the same, or any of them, in any other place or places, at any other time or times whatsoever.

Thereupon counsel for the Government renewed its objections as aforesaid and also objected to the introduction of the proposed testimony on the further ground that the same was wholly incompetent, immaterial and irrelevant. After hearing counsel on both sides, the Court announced its conclusions as follows:

"The conclusion reached by the Court is that in a proceeding for the arrest and the removal of persons charged with a violation of th laws of the United States pursuant to section 1014 of the Revised Statutes of the United States, before a United States District

155 Judge, sitting in the State *-fore a United States District Judge, sitting in the State* of Virginia, in which State there no longer exists the right of a preliminary examination upon a crime charged prior to the trial upon the merits, when said Judge is called upon to act as well in the matter of the apprehension of such persons, as in their removal to the jurisdiction in which they have been indicted, that upon the government's presentation of a sufficient indictment regularly found by a grand jury in a court of the United States, properly charging the commission of an offense within the District in which such indictment is found, coupled with proof of the identity of the person indicted, it is its duty to properly bail such person for appearance before the court in which he is indicted, or cause him to be removed thereto."

Therefore, it was ordered that the testimony offered is inadmissible, and will not be received, and I therefore made the following order.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The within named William DeC. Kessler having been brought before me, and identified; and it appearing by a duly authenticated copy of an indictment that he stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," for violation of section one of the act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies"
156 and for violation of section 5440 of the Revised Statutes of the United States, it is ordered that the said William DeC. Kessler give bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial before said Court under the said indictment; or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee, to be there dealt with according to law.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

Richmond, Va., July 11", 1906.

And after said order had been made and the defendant declined to give bond, the Counsel for the United States moved that the warrant do issue directed to the Marshal of this District for the imprisonment and removal of the said William DeC. Kessler to the Middle District of Tennessee and his delivery to the custody of the United States Marshal of that district.

On such motion counsel for the said William DeC. Kessler objected and again offered the said William DeC. Kessler as a witness, together with the other witnesses herebefore referred to, to establish the same matters and facts as hereinbefore stated with regard to the objection to the order for the commitment of the said William DeC. Kessler, which testimony was again offered and was again objected to by counsel for the United States on the same grounds as
157 above set forth, and on the further ground that these matters could not now be inquired of in this stage of the proceedings, and was again excluded by the court, to all of which counsel for the said William DeC. Kessler duly excepted and had the exceptions noted and entered.

I therefore issued a warrant directed to the Marshal as follows:

Richmond, Va., July 14, 1906.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

Warrant of Imprisonment and Removal.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The President of the United States to the United States Marshal of the Eastern District of Virginia, Greeting:

Whereas it has been made to appear that William DeC. Kessler stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said court entitled: "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," for violation of section one of the act of Congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States; and whereas the said William DeC. Kessler having been brought before me, and identified; and a certified copy of said indictment furnishing probable cause to believe him
158 to be guilty as therein charged, and whereas it was thereupon ordered by me that said defendant give bail in the sum of five thousand dollars with one or more sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial under said indictment, or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee to be there dealt with according to law; and the said defendant having *b*ailed and refused to give bail as required, therefore:

You are hereby commanded in the name and by the authority of the said United States to imprison the said William DeC. Kessler in accordance with law, and that with all convenient speed you remove him hence to the said Middle District of Tennessee and there surrender him to the Marshal of that District, there to be dealt with according to law.

Richmond, Va., July 14, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

Richmond, Va., July 14, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge.

159 *Certificate of Clerk.*

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

I, G. E. Bowden, Clerk of the District Court of the United States for the Eastern District of Virginia, do hereby certify that the foregoing is a full and true transcript of the record and proceedings in the therein entitled cause made in obedience to the direction in the return of the Honorable Edmund Waddill, Jr., Judge of said Court to the writ of certiorari, attached to and made a part of said record.

In witness whereof, I have hereunto set my hand and affixed the

seal of the said District Court, at the City of Richmond, this 14th day of July, A. D., 1906.

[Seal United States District Court.]

G. E. BOWDEN,
Clerk United States District Court,
By JOSEPH P. BRADY,
Deputy Clerk U. S. District Court.

Certificate of United States District Judge.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

I, Edmund Waddill, Jr., Judge of the District Court of the United States for the Eastern District of Virginia do hereby certify that the foregoing is a full and true transcript of the record
160 and proceedings had before me in the therein entitled cause.

In witness whereof, I hereunto set my hand and seal of said Court at Richmond, this 18th day of July, A. D., 1906.

[Seal United States District Court.]

EDMUND WADDILL, JR.,
United States District Judge.

161 *Conclusions of the Court.*

Filed July 14th, 1906.

In the United States Circuit Court for the Eastern District of Virginia.

In the Matter of the Petition of WILLIAM DEC. KESSLER for Writs of *Habeas Corpus* and Certiorari.

WILLIAM DEC. KESSLER, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

Petitioner alleges that he is unlawfully deprived of his liberty. He prays that by virtue of the writ of *Habeas Corpus,* he may be discharged from custody. I find from the petition, from its exhibits, and from respondents' reply that petitioner has been committed to the Marshal of the Eastern District of Virginia by an order of the United States District Judge of that District, with directions to remove petitioner to the Middle District of Tennessee, in order that he may be there tried on an indictment in which he with others,

is charged with a violation of the laws of the United States The proceedings so resulting were conducted under the provisions of section 1014 of the Revised Statutes of the United States. The Judge so hearing the matter, and so issuing said order of removal, acted in conformity with like proceedings, as provided for in criminal actions in the state of Virginia, in which state petitioner resides, and where the application for his removal was made.

162 On the hearing of this petition, I am asked to permit petitioner to offer testimony, the object of which is to show that probable cause does not exist as to petitioner's guilt of the offense of which he is charged; that he was not within the limits of the jurisdiction of the Middle District of Tennessee when said offense is alleged to have been committed; and testimony tending to show that he is innocent of the charge alleged in the indictment returned against him. Petitioner insists that he should not be removed to said Middle District of Tennessee for trial, but should be discharged from arrest. Should I, on this hearing, permit such testimony? I find from the record before me, that the indictment charges conspiracy; that it is alleged therein that petitioner with others, did in the Middle District of Tennessee, conspire to commit an offense against the laws of the United States. The indictment, in my judgment, sufficiently sets forth such offense. I find that it is in due form, and that it charges a crime; that it alleges a conspiracy such as is prohibited by the laws of the United States; and that an overt act, as described in the statute is charged as having taken place in the Middle District of Tennessee. Such being the charge, I am of the opinion, under the law applicable thereto, that the personal presence of petitioner in said jurisdiction was not essential; and that he can be lawfully proceeded against in that district; and if the allegations set out in the indictment are sustained by competent evidence, that a conviction there can be upheld.

If such be the case, does it not follow that the testimony offered by the petitioner is immaterial? The indictment charges the commission of a crime; alleges that the petitioner with others committed it; and the laws authorizes his conviction in the district to which he has been ordered removed, if an overt act in pursuance of

163 said conspiracy was committed there. Technical objections to said indictment should not be considered by me on this hearing; they should only be heard by the court in which the indictment was returned.

While it is true that the order to remove for trial should only be issued in cases where probable cause has been shown, it is equally true that a certified copy of the indictment, with proof of the identity of the party accused, has been in a number of well considered cases, held to establish probable cause, and to authorize the warrant of removal. It must be conceded that the authorities are conflicting; but to my mind the path we should follow has been plainly indicated by the opinions of that great tribunal, whose mandates we all obey, whose judgments are the supreme law of the land. In Beavers *v.* Hanckel, 194 U. S., 73, the case rested on the efficacy of the indictment; for no other evidence of guilt was offered. The indictment

was held to be *prima facie* evidence of the existence of probable cause. It satisfied the requirements of the constitution, and the laws made thereunder. Why should not the indictment in the case we now have under consideration serve the same purpose? The testimony tendered is, as I understand this case, immaterial, and the identity of the accused is admitted. His guilt or innocence is not to be ascertained by testimony offered in this jurisdiction, in connection with questions involved in the proceedings relating to the warrant of removal, or this writ of *habeas corpus*. That matter must go to the jury impaneled by the court in which the indictment was returned. To hold otherwise would result in inextricable confusion, and to discharge the petitioner on the showing now made, would tend to impede the due administration of justice; and can
164 only be done, in my opinion, by a strained construction of the statutes.

The writ will be dismissed, and petitioner will be remanded to the custody of the Marshal.

NATHAN GOFF,
U. S. Circuit Judge.

July 14th, 1906.

Order Dismissing Petition and Discharging Writ of Habeas Corpus and Allowing Appeal.

Filed July 14th, 1906.

In the Circuit Court of the United States for the Eastern District of Virginia.

In the Matter of the Petition of WILLIAM DEC. KESSLER for Writs of *Habeas Corpus* and Certiorari.

WILLIAM DEC. KESSLER, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

This cause was on this, the 14th day of July, 1906, heard before the Honorable, the Circuit Court of the United States for the Eastern District of Virginia, the Honorable Nathan Goff, Circuit Court Judge, presiding, upon the petition of said William DeC. Kessler in this cause and the return of the Marshal, the defendant,
165 thereto, and the return of the District Judge of the Eastern District of Virginia (by agreement the copy of the findings and order of said District Judge being here now taken as his return to said writ of certiorari, and the motion of the petitioner, by his counsel, hereinafter mentioned.

The petition and the return of the Marshal thereto were read, and thereupon the petitioner presented himself as a witness and his coun-

sel moved the Court that he be sworn in order to testify as such, and as such witness to prove the facts averred and set forth in said petition, which facts were then and there repeated and restated to the Court; and his counsel then also stated that the said witness, and other persons then present as witnesses, would testify and prove that the said facts set forth and averred in the petition and exhibits, and repeated by him to the Court, were true.

Thereupon the Honorable Edward T. Sanford, Special Counsel representing the United States, and also the defendant Marshal, objected to the swearing of the said petitioner as a witness and also to the admission of said evidence, upon the ground that said evidence was immaterial and irrelevant, and that it was not allowable to contradict or transverse by evidence in this Court the averments of the indictment which had been found against the petitioner in the Circuit Court of the United States for the Middle District of Tennessee, and that there was no error in the action of the District Judge. The objection so made was sustained, and the witness not allowed to be sworn nor allowed to testify to the facts above stated, to which action of the Court the petitioner then and there excepted.

166 Thereupon it was ordered and adjudged by the said Court that the petition be dismissed and the writ of *habeas corpus* heretofore issued in this cause upon the said petition be and the same is hereby dismissed and discharged; and that the said William DeC. Kessler be remanded to the custody of said Morgan Treat, U. S. Marshal, for the Eastern District of Virginia, to be dealt with by him according to the directions of the writ of the process under which he had custody of the said William DeC. Kessler.

Thereupon, the petitioner presented his petition, setting forth that he was aggrieved by the said order dismissing the said writ of *habeas corpus,* and praying that he be allowed to prosecute an appeal from said final order or judgment, to the Supreme Court of the United States under and according to the law of the United States in that behalf made together with his assignment of error in that behalf which appeal is allowed; and the petitioner having been allowed and the said appeal being hereby granted, the petitioner, by his counsel, thereupon moved the Court that he be enlarged or admitted to bail pending the decision of his said case upon said appeal; and thereupon it was accordingly ordered that the said petitioner and appellant be, and he is hereby enlarged upon his bond and admitted to bail, pending the said appeal to the Supreme Court of the United States; said bond to be in the penal sum of $5,000.00, to be taken and approved by the Clerk of this Court and conditioned for the said petitioner and appellant to appear before this Court to abide such order as shall be made by this Court upon the mandate of the Supreme Court of the United States upon the determination of petitioner's said appeal; and upon the execution by the said William DeC. Kessler of such bond, with surety or sureties, to be approved by the Clerk of this Court, he will be enlarged and admitted to bail. The Clerk will take as surety any satis-

167 factory guaranty company.

The opinion of the Court in dismissing the petition and

discharging the writ of *habeas corpus* is made part of the record herein and will be copied by the Clerk in the transcript on appeal.

July 14, 1906.

NATHAN GOFF,
U. S. Circuit Judge.

Appearance Bond.

Filed July 14th, 1906.

In the Circuit Court of the United States for the Eastern District of Virginia.

In the Matter of the Petition of WILLIAM DEC. KESSLER for Writs of *Habeas Corpus* and Certiorari.

WILLIAM DEC. KESSLER, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

We as principal, and American Surety Company of New York a guaranty and surety company, organized and existing under the laws of the State of New York, with power and authority to become surety for principals in appearance bonds, jointly and severally acknowledge ourselves to owe and to be bound to the United States of America in the penal sum of Five Thousand Dollars ($5,000.00), severally to be made and levied of our goods, chattels, lands and tenements, if default be made herein.

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The condition of this obligation is as follows: Whereas the said William DeC. Kessler, being detained in the custody of Morgan Treat, United States Marshal for the Eastern District of Virginia, under commitment and warrant of removal to the Circuit Court of the United States for the Middle District of Tennessee, granted by the Honorable Edmund Waddill, Jr., Judge of the District Court for the Eastern District of Virginia, presented his petition for and sued out a writ of *habeas corpus* from the Circuit Court of the United States for the Eastern District of Virginia, and the said writ of *habeas corpus* duly issued to the said Treat, Marshal, and he made his return thereto; and the said matter of *habeas corpus* came on for hearing before the said Circuit Court of the United States for the Eastern District of Virginia, on the 14th day of July, 1906, when by order thereof the said petition was dismissed and the said writ of *habeas corpus* discharged, and the said William DeC. Kessler remanded to the custody of the said Morgan Treat, Marshal, to be proceeded with as provided by law; and

Whereas, from the said final order dismissing the said petition and writ of *habeas corpus*, the said William DeC. Kessler prayed an ap-

peal to the Supreme Court of the United States, which was granted and said appeal perfected; and

Whereas, the said Circuit Court of the United States allowed said appeal, ordered that pending said appeal the said William DeC. Kessler upon the execution of a bond in the penal sum of Five
169 Thousand Dollars ($5,000.00), conditioned as by said order was provided, might be enlarged and admitted to bail;

Now, therefore, in compliance therewith, and in order to be so enlarged, the said William DeC. Kessler as principal, and the said American Surety Company of New York, as surety, execute this bond upon the condition that, if the said William DeC. Kessler shall duly personally appear in and before the Circuit Court of the United States for the Eastern District of Virginia, then and there to answer the exigency and determination of said appeal, and personally abide the final decision and determination of the said Supreme Court of the United States and of the said Circuit Court of the United States, upon the mandate of the said Supreme Court of the United States, and obey and abide the orders of said Circuit Court of the United States, and not depart without leave upon the conditions aforesaid, and upon the entry of said orders upon said appeal, then and in that event this bond or obligation shall be void; but otherwise it shall be and remain in full force and effect.

In witness whereof, the said William DeC. Kessler as principal, and the said American Surety Company of New York as surety, the said surety being represented by and through Robert Le Masurier, its duly authorized agent and attorney, have hereunto on this the 14th day of July, 1906, set their hands.

[Seal of American Surety Company.]

WILLIAM DEC. KESSLER. [SEAL.]
AMERICAN SURETY COMPANY OF NEW YORK,
By ROB'T LE MASURIER, *Agent.*

Signed, sealed and delivered in the presence of
JOSEPH P. BRADY, *Clerk.*

170 *Notice of Appeal.*

Filed July 14th, 1906.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of WILLIAM DEC. KESSLER for Writs of *Habeas Corpus* and Certiorari.

WILLIAM DEC. KESSLER, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia; JOSEPH P. BRADY, Deputy Clerk of the District Court of the United States for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

SIRS: Please take notice that William DeC. Kessler petitioner above named hereby appeals to the Supreme Court of the United States from the final order made and entered on the 14th day of July, 1906, by the Honorable Nathan Goff, Judge of the Circuit Court of the United States, Fourth Judicial Circuit of Virginia, discharging his application for writs of *habeas corpus* and certiorari and from each and every part of said order.

Dated at the City of Richmond, State of Virginia, on the 14th day of July, 1906.

Respectfully,

JOHN J. VERTRESS,
JAMES C. BRADFORD,
JOHN S. MILLER,
Attorneys for Petitioner and Appellant.

171 *Petition for Appeal.*

Filed July 14th, 1906.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of WILLIAM DEC. KESSLER for Writs of *Habeas Corpus* and Certiorari.

WILLIAM DEC. KESSLER, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

The petition of the above named petitioner William DeC. Kessler for an order, allowing an appeal to the Supreme Court of the United

States from the final order in the above styled cause, discharging the writs of *habeas corpus* and certiorari in this cause and remanding petitioner to the custody of the said Morgan Treat, United States Marshal:

William DeC. Kessler, the petitioner and appellant above named, feeling himself, aggrieved by the final order heretofore made and entered by this Court in this cause on the 14th day of July, 1906, whereby it was ordered that his petition for a writ of *habeas corpus*, directed to said Morgan Treat, United States Marshal, in and for the said District of Virginia, and his writ of certiorari, directed to Hon. Edmund Waddill, Jr., United States District Judge for said
172 District, commanding him to return all the proceedings, warrants, depositions, examinations, commitments and record of all proceedings against your petitioner to the Circuit Court of the United States, were, after the same had been duly granted and return made thereon by this Honorable Court, discharged, and petitioner was by said order remanded to the custody of said Morgan Treat, United States Marshal, as aforesaid.

Now come, Jno. J. Vertress and Jas. C. Bradford, his attorneys and counsel, praying this court for an order allowing your petitioner to prosecute an appeal from said final order of the United States Circuit Court to the Supreme Court of the United States, and according to the laws of the United States in that behalf made.

Your petitioner is advised by his counsel that *in* the proceedings referred to in the petition for writs of *habeas corpus* and certiorari, and the said order discharging the same have infringed the constitutional rights of your petitioner and that the commitment of your petitioner and the restraint of his person referred to in said petition and under said order is without authority of law and that the said United States District Judge acting as United States Commissioner, before whom your petitioner was arraigned, as set forth in said petition hereinbefore referred to had no jurisdiction to either require bail of petitioner or to commit petitioner in default thereof, and your petitioner desires in good faith to submit the constitutional questions and other questions involved to the Supreme Court of the United States for their determination.

And your petitioner will ever pray, etc.

JOHN J. VERTRESS,
JAMES C. BRADFORD,
JOHN S. MILLER,
Attorneys for Petitioner and of Counsel.

173 UNITED STATES OF AMERICA, *Eastern District of Virginia:*

William DeC. Kessler, being duly sworn on his oath, deposes and says that he is the petitioner above named, that the foregoing petition is true of his own knowledge, except as to those matters which are therein stated on his information and belief, and as to those matters, he believes them to be true.

Sworn to before me this 14th day of July, 1906.

JOSEPH P. BRADY,
Clerk of the United States Circuit Court,
Eastern District of Virginia.

Assignment of Errors.

Filed July 14th, 1906.

In the Supreme Court of the United States.

In the Matter of the Petition of WILLIAM DeC. KESSLER for Writs of *Habeas Corpus* and Certiorari.

WILLIAM DeC. KESSLER, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

The petitioner, William DeC. Kessler, by John J. Vertress and Jas. C. Bradford and John S. Miller, his Counsel in connec-
174 tion with his petition of appeal herein, entered herein, to the Supreme Court of the United States, from the final order made and entered in the United States Circuit Court of the Fourth Judicial Circuit in and for the Eastern District of Virginia, discharging the writs of *Habeas Corpus* and certiorari and remanding petitioner to the custody of the said Morgan Treat, Marshal, *and* makes and files the following assignment of errors:

1. The court erred in discharging the petitioner's writs of *Habeas Corpus* and Certiorari and remanding him to the custody of the United States Marshal.

2. In refusing to grant the prayer of said writs.

3. In refusing to discharge said petitioner.

4. In holding that the restraint of the petitioner's liberty is legal.

5. In holding that the restraint of your petitioner is not in violation of his substantial rights.

6. In holding that said alleged indictment or any count thereof stated an offence against the laws of the United States.

7. In holding that the alleged indictment, or any count thereof was sufficient upon which to base a warrant of removal.

8. In holding that there was sufficient evidence of probable cause.

9. In holding that the warrant of removal made by the United States District Judge for the Eastern District of Virginia was issued upon the finding of probable cause; and in not holding that said order & warrant of removal were unauthorized & void because said District Judge refused to receive or hear any evidence offered by petitioner.

10. In holding that the alleged indictment with proof of
175 identify was conclusive evidence of probable cause.

11. In holding that upon the introduction in evidence of the alleged indictment with proof of identity that the defendant, your petitioner, was not entitled to introduce evidence offered by him and in refusing to hear or receive any evidence offered by him to

show that the alleged offence, charged in said indictment and in each count thereof had not been committed by him in the State of Tennessee, in which state the indictment was found and in so holding, violating Article V and Article VI of the Amendments to the Constitution of the United States in that he was deprived of his liberty without due process of law.

12. In failing to hold that your petitioner is deprived of his liberty without due process of law in violation of Article V of the Amendments to the Constitution of the United States, in that said District Judge refused to hear or receive any evidence offered by your petitioner in that the complaint and evidence referred to herein, which were the sole authority for the petitioner's arrest and commitment as aforesaid failed to charge the petitioner with any crime against the laws of the United States.

13. In failing to hold that the petitioner's detention was in violation of Article V of the amendments to the Constitution of the United States in that the said United States District Judge, sitting as United States Commissioner and the United States District Judge has such jurisdiction to order the arrest and commitment of your petitioner, and that your petitioner is held to answer for a crime without any sufficient or valid indictment of a grand jury.

14. In failing to hold that restraint of your petitioner is in violation of Article IV of the Amendments to the Constitution of the United States, because it appears from the indictment upon
176 which the warrant in this case was issued that it was wholly void.

15. In failing to hold the restraint of your petitioner is in violation of the provisions of Article IV of the amendments to the Constitution of the United States for the reasons particularly specified in his petition for a writ of *habeas corpus*.

16. In holding that a warrant of removal should issue for the reason that the proceedings conclusively show, by the indictment that the venue for the facts alleged in the indictment is not and was not in the Middle District of the State of Tennessee or in the State of Tennessee.

17. In failing to hold that the restraint of your petitioner is in violation of the provisions of Article VI of the amendments to the constitution of the United States for the reason that upon the proof offered to be made and rejected by the United States District Judge, sitting as a commissioner, and the United States District Judge and this Honorable Court, sitting upon the hearing of the petition of *habeas corpus*, and by the averments of said petition which were not controverted, it was conclusively shown that the offences charged in the indictment were not committed in the Middle District of the State of Tennessee or in the State of Tennessee, and that he could not be lawfully tried by a jury of the State of Tennessee and of the Middle District of Tennessee where said indictment was found.

18. In holding that the warrant of removal was properly issued, as the record and proceedings conclusively show that the alleged offence, complained of in the indictment and the several counts thereof, did not occur within the Middle District of the State of

Tennessee, or in the State of Tennessee, and that your pe-
177 titioner did not conspire to commit any offence within the State of Tennessee, or in the Middle District thereof.

19. In holding that your petitioner was lawfully in the custody of said Morgan Treat, United States Marshal in and for the Eastern District of Virginia, and was lawfully deprived of his liberty by him by due process of law.

20. For other errors appearing on the record, by reason whereof, the petitioner prays that the said order, discharging said writs of *Habeas Corpus* and Certiorari be reversed and the petitioner discharged from custody.

JOHN J. VERTRESS,
JAMES C. BRADFORD,
JOHN S. MILLER,
Attorneys for Petitioner and Appellant.

Appeal Bond.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of WILLIAM DEC. KESSLER for Writs of *Habeas Corpus* and Certiorari.

WILLIAM DEC. KESSLER, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

178 Know all men by these presents, that, we, William DeC. Kessler and James G. Tinsley his surety, are held and firmly bound unto the United States of America, in the full and just sum of Five hundred dollars to be paid to the United States, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this 14th day of July, 1906.

Whereas, lately, to-wit; on the 14th day of July, 1906, at the Circuit Court of the United States, in and for the Fourth Judicial Circuit, Eastern District of Virginia, in a proceeding therein pending, an order was entered discharging the writs of *habeas corpus* and certiorari, of the above named petitioner in the above mentioned proceeding and said petitioner having duly obtained an appeal from the said order to the Supreme Court of the United States and filed a copy thereof in the Clerk's office of said Circuit Court to review the same,

Now, the Condition of the Above Obligation, is such, that if the said petitioner William DeC. Kessler, shall prosecute said appeal to

effect and shall answer all costs if he should fail to make said appeal good, then this obligation to be void; else to remain in full force and effect.

WILLIAM DEC. KESSLER. [SEAL.]
JAMES G. TINSLEY. [SEAL.]

Sealed, and delivered, and taken and acknowledged, this 14th day of July, 1906, before me,

JOSEPH P. BRADY, *Clerk.*

UNITED STATES OF AMERICA,
Eastern District of Virginia, To wit:

James G. Tinsley being duly sworn says that he is worth more than the sum of Five Hundred Dollars, over and above all his just debts and liabilities.

Sworn to before me this 14th day of July, 1906.

JOSEPH P. BRADY, *Clerk.*

Citation.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of WILLIAM DEC. KESSLER for Writs of *Habeas Corpus* and Certiorari.

WILLIAM DEC. KESSLER, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia; Jos. P. BRADY, Deputy Clerk of the District Court of the United States for the Eastern District of Virginia; and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Judge L. L. Lewis, United States District Attorney for the Eastern District of Virginia, Jos. P. Brady, Clerk of the United States Circuit Court for the Eastern District of Virginia, Morgan Treat, United States Marshal in and for the Eastern District of Virginia; Hon. Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia, and Jos. P. Brady, Deputy Clerk of the United States District Court for the Eastern District of Virginia:

You are cited and admonished to be and appear at the Supreme Court of the United States at the City of Washington, within thirty days from the date of this writ, pursuant to an appeal duly allowed by the Circuit Court for the Fourth Judicial Circuit, Eastern Dis-

trict of Virginia and filed in the Clerk's Office of said Court on the 14th day of July, 1906, in the cause entitled, in the matter of the petition of William DeC. Kessler for writs of *habeas corpus* and certiorari, William DeC. Kessler, appellant, *versus*, Morgan Treat, United States Marshal in and for the Eastern District of Virginia, Jos. P. Brady, Deputy Clerk of the District Court of the United States in and for said Eastern District of Virginia, and Hon. Edmund Waddill, Jr., United States District Judge in and for said Eastern District of Virginia, Appellees, to show cause, if any, why the final order of said Circuit Court, rendered against the appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Hon. Nathan Goff, Judge of the United States Circuit Court, this 14th day of July, A. D., 1906.

NATHAN GOFF,
Judge of the Circuit Court
of the United States.

Acceptance of Service by United States District Judge.

Legal service of the within Citation is hereby acknowledged this 21st — July, 1906.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

181 *Marshal's Return.*

Executed this 23rd day of July 1906, by delivering in person in the City of Richmond, Va., a true copy of the within citation to the following named persons viz: L. L. Lewis United States District Attorney for the Eastern District of Virginia, Joseph P. Brady Clerk of the United States Circuit Court for the Eastern District of Virginia, Joseph P. Brady Deputy Clerk of the United States District Court for the Eastern District of Virginia.

MORGAN TREAT,
United States Marshal.

Further executed this 23rd day of July 1906, by delivering in person in the City of Richmond, Va. to Morgan Treat United States Marshal for the Eastern District of Virginia, a true copy of this citation.

MORGAN TREAT,
United States Marshal,
By M. J. ENRIGHT,
Office Deputy Marshal.

182 *Order Transmitting Record.*

And thereupon, it is ordered by the Court here that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the Supreme Court of the United States of America, and the same is transmitted accordingly.

Teste:

JOSEPH P. BRADY,
Clerk United States Circuit Court.

Clerk's Certificate.

THE UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

I, Joseph P. Brady, Clerk of the Circuit Court of the United States for the eastern District of Virginia, do hereby certify that the foregoing is a full and true transcript of the record and proceedings of the said Circuit Court, together with all things thereunto relating, in the therein entitled cause.

In testimony whereof, I hereunto set my hand and affix the seal of the said Circuit Court of the United States for the Eastern District of Virginia, at Richmond, this 10th day of August, A. D., 1906.

[Seal United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Endorsed on cover: File No. 20,335. E. Virginia, C. C. U. S. Term No. 370. William DeC. Kessler, appellant, *vs.* Morgan Treat, United States marshal in and for the eastern district of Virginia, *et al.* Filed August 14, 1906. File No. 20,335.

CLERK'S COPY

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 371.

SAMUEL T. MORGAN, APPELLANT,

vs.

MORGAN TREAT, UNITED STATES MARSHAL IN AND FOR THE EASTERN DISTRICT OF VIRGINIA, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

FILED AUGUST 14, 1906.

(20,336.)

(20,336.)

SUPREME COURT OF THE UNITED STATES

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a In the Supreme Court of the United States.

In re Petition of SAMUEL T. MORGAN for Writs of *Habeas Corpus* and Certiorari.

SAMUEL T. MORGAN, Appellant,

vs.

MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia; Jos. P. BRADY, Deputy Clerk of the District Court of the United States for the Eastern District of Virginia, and Hon. EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Judge L. L. Lewis, United States District Attorney for the eastern District of Virginia; Jos. P. Brady, Clerk of the United States Circuit Court for the eastern district of Virginia; Morgan Treat, United States Marshal in and for the eastern District of Virginia; Hon. Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia, and Jos. P. Brady, Deputy Clerk of the United States District Court for the eastern District of Virginia:

You are cited and admonished to be and appear at the Supreme Court of the United States at the City of Washington, within thirty days from the date of this writ, pursuant to an appeal duly allowed by the Circuit Court for the Fourth Judicial Circuit, Eastern District of Virginia, and filed in the Clerk's office of said Court on the 14th day of July, 1906, in the cause entitled, in the matter of the
b petition of Samuel T. Morgan for writs of *habeas corpus* and certiorari Samuel T. Morgan, Appellant, *versus,* Morgan Treat, United States Marshal in and for the eastern District of Virginia, Jos. P. Brady, Deputy Clerk of the District Court of the United States in and for said eastern District of Virginia and Hon. Edmund Waddill, Jr., United States District Judge, in and for said Eastern District of Virginia, Appellees, to show cause, if any, why the final order of said Circuit Court, rendered against the appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Hon. Nathan Goff, Judge of the United States Circuit Court, this 14th day of July, A. D., 1906.

NATHAN GOFF,
Judge of the Circuit Court of the United States.

c Legal service of the within citation is hereby acknowledged this 21st July, 1906.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

Executed this 23rd day of July 1906 by delivering in person in the City of Richmond, Va., a true copy of the within citation to the following named persons viz: L. L. Lewis United States District Attorney for the Eastern District of Virginia, Joseph P. Brady Clerk of the United States Circuit Court for the Eastern District of Virginia, Joseph P. Brady Deputy Clerk of the United States District Court for the Eastern District of Virginia.

MORGAN TREAT,
United States Marshal.

Marshal's Fees for service $6.00.

Further executed this 23rd day of July 1906 by delivering in person in the City of Richmond Va. to Morgan Treat United States Marshal for the Eastern District of Virginia, a true copy of the within citation.

MORGAN TREAT,
United States Marshal,
By M. J. ENRIGHT,
Office Deputy Marshal.

Marshal's Fees for service, $2.00.

d [Endorsed:] No. —. Circuit Court of the U. S., Eastern District of Virginia. In the Matter of the Petition of Samuel T. Morgan for Writs of *Habeas Corpus* and Certiorari. Samuel T. Morgan, Appellant, *vs.* Morgan Treat, United States Marshal &c., *et als.*, Appellees. Citation. Filed this 14th day of July, 1906. Joseph P. Brady, Clerk.

THE UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

At a Circuit Court of the United States for the Eastern District of Virginia, begun and held at the Court Rooms in the Custom House, in the City of Richmond, Virginia, on the first Monday in April, being the second day of the same month, in the year of our Lord one thousand, nine hundred and six.

Present: The Honorable Nathan Goff, Judge of the Circuit Court of the United States for the Eastern District of Virginia.

Among other were the following proceedings, to-wit:

In the Matter of the Petition of SAMUEL T. MORGAN for Writs of *Habeas Corpus* and Certiorari.

SAMUEL T. MORGAN, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

2 *Petition for Writs of Habeas Corpus and Certiorari.*

Filed July 14, 1906.

In the Circuit Court of the United States for the Eastern District of Virginia.

In the Matter of the Petition of SAMUEL T. MORGAN for Writs of *Habeas Corpus* and Certiorari.

SAMUEL T. MORGAN, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

To the Honorable the Judges of the Circuit Court of the United States for the Eastern District of Virginia:

The Petition and Complaint of Samuel T. Morgan respectfully shows to the Court:

1.

That your Petitioner is a citizen of the United States, and is a citizen and resident of the Easertn District of — and is unlawfully imprisoned and restrained of his liberty by Morgan Treat, United States Marshal for the Eastern District of Virginia, in the City of Richmond, and County of Henrico, in said District. That your petitioner is held by said Marshal under color and claim of authority of the United States, by virtue of a warrant for removal claimed to have been issued under section 1014 of the Re-
3 vised Statutes of the United States, dated July 14, 1906, signed by the Honorable Edmund Waddill, Jr., Judge of the District Court of the United States for the Eastern District of Virginia, and has been committed and is detained only under and by virtue of said warrant, and not by virtue of any judgment, decree or final order of any court.

2.

On the 14th day of July, 1906, at the said City of Richmond, in said District, complaint in writing signed and sworn to by

Morgan Treat, United States Marshal in and for said District, a copy of which is hereto attached, marked "Exhibit A," and made part hereof, was presented to the Honorable Edmund Waddill, Jr., Judge of the District Court of the United States for the said District, in and by which it was averred that he, the said Morgan Treat, United States Marshal, had good cause to believe and did believe that your petitioner, —— ——, had been indicted by the Grand Jury of the Circuit Court of the United States in and for the Middle District of Tennessee, for that your petitioner on the 8th day of July, 1903, and during the period of time from that date until and on the first day of September, 1905, and being during said period President of the Virginia-Carolina Chemical Company, a corporation existing under the laws of the State of New Jersey, did, in said Middle District of Tennessee, unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section 1 of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and that on the 8th day of July, 1903, at and within the County of Davidson in the said Middle District of Tennessee, in violation of the provisions
4 of section 5440 of the Revised Statutes of the United States, your petitioner did unlawfully conspire with divers other persons and corporations to commit an offense against the United States, to-wit: The offense of engaging in a combination in restraint of trade and commerce among the several States of the United States, all as more fully set out in an indictment filed in the said Circuit Court of the United States in and for the Middle District of Tennessee on May 25th, 1906, a certified copy of which indictment said complaint states was thereto attached and made a part of said complaint, and in and by which said complaint, said complainant did, therefore, charge that your petitioner did commit the said offense against the United States in the manner and form as set forth in said indictment, and did furthermore aver in said complaint upon information and belief that in pursuance of an order of the said Circuit Court of the United States for the Middle District of Tennessee, a Bench Warrant had been issued from said Court for the arrest of your petitioner and delivered to the Marshal of the said Court who, after due search, had returned said warrant "Not found" in said Middle District of Tennessee and that your petitioner is now believed to be within the Eastern District of Virginia, of which District he is a resident.

And said complainant, said Morgan Treat, United States Marshal, in and by said complaint did therefore pray that your petitioner might be arrested, imprisoned, and removed or bailed, as the case might be, for trial before said Circuit Court of the United States for the Middle District of Tennessee, and further dealt with according to law; all of which will appear from the said complaint, a copy of which is hereto attached as aforesaid, reference thereto being hereby made for greater certainty. And that thereupon, to-wit, on
5 the said 14th day of July, 1906, a warrant for his arrest was issued by the Honorable Edmund Waddill, Jr., Judge as aforesaid, upon the aforesaid complaint, which came to the hands

of the said Morgan Treat, Marshal as aforesaid, and he, in obedience thereto, arrested your petitioner and brought him before the said Honorable Edmund Waddill, Jr., Judge as aforesaid, and made return of said warrant, endorsed thereon, and a copy of said warrant with the endorsement thereon is hereto attached marked "Exhibit B" and made a part hereof.

3.

That thereupon then and there, the United States Attorney in and for the said Eastern District of Virginia, for and on behalf of the United States, did offer and introduce in evidence to and before the said Judge, in support of the averments of the said complaint of said Morgan Treat, United States Marshal, a certified copy of the said indictment mentioned and referred to in the said complaint. A certified copy of said indictment so offered and introduced in evidence is hereto attached, marked "Exhibit C," and made a part hereof, and the identity of your petitioner with and as the Samuel T. Morgan mentioned and referred to in said indictment as one of the defendants therein, having been then and there admitted by your petitioner, the Government, the United States of America, introduced or offered no other or further proof or evidence in support of the said complaint or of the averments therein, but rested its case upon the said hearing of the said complaint before the said Judge.

4.

That thereupon, then and there, your petitioner, by his counsel, proceeded to offer, and offered, proof and evidence by
6 witnesses then and there present to show that your petitioner did not within the said Middle District of Tennessee, on the 8th day of July, 1903, or during the period between the 8th day of July, 1903, and the 1st day of September, 1905, or at any other time, engage in the said alleged conspiracies in the said indictment mentioned, or any or either of them, or at any time or at any place, join in or assent to the said alleged conspiracies engaged in or entered upon in said Middle District of Tennessee, or any or either of them, or at any time or at any place do any act in furtherance of, or to effect the object of said alleged conspiracies engaged in in said Middle District of Tennessee, or any or either of them. Thereupon, then and there, the Counsel for the Government, upon the said hearing, did object to the introduction on the behalf of your petitioner of the said evidence or any evidence or proof tending to contradict or controvert the respective averments, or any or either of them in the said indictment and in the respective counts thereof, viz., that your petitioner did engage in the said alleged conspiracy in said indictment mentioned and referred to, in the said Middle District of Tennessee, in manner and form as in the said indictment in that behalf averred, or to contradict or controvert or disprove any of the averments in the said indictment contained,—on the ground, then and there stated, that upon the said hearing of said complaint, the said certified copy of the said indictment was conclusive evidence of every fact therein

averred to sustain and prove upon the said hearing the said complaint of the said Morgan Treat, United States Marshal, and the averments thereof, and the probable cause of the commission by your petitioner of the said supposed offenses in the said indictment mentioned and of any and every of them in the manner and
7 form as in the said indictment averred, and in that behalf, your petitioner then and there took the witness stand and demanded to be sworn as a witness in his own behalf, but the Counsel for the Government objected, and the objection was by said Judge sustained, and he was not permitted to be sworn or to testify.

5.

That thereupon, then and there, your petitioner by his counsel stated to the Judge that he would prove, and then and there his said counsel offered to prove by your petitioner as a witness the following facts, which facts are true, that is to say:

That he was not on the 8th day of July, 1903, or during the period between the 8th day of July, 1903, and the 1st day of September, 1905, in the State of Tennessee, or the Middle District of Tennessee, and that he has not been in the Middle District of Tennessee, or the State of Tennessee since June, 1900;

That he did not enter, assent to, join or engage in the conspiracies in the indictment mentioned or any of them, within the Middle District of Tennessee, at the time mentioned therein, or at any other time;

That he did not, within the period mentioned, or at any other time within the Middle District of Tennessee, do any act or thing to promote, or further the said conspiracies in the indictment mentioned, or any of them, or to effect the objects or purposes thereof;

That he did not at any time, or any place, join, assent to, enter or engage in the conspiracies, or any of them, engaged in in the Middle District of Tennessee, alleged or averred in said indictment.

8 6.

That the United States Attorney, on behalf of the Government, then and there objected to the introduction or reception by the said Judge of the said evidence so offered on behalf of your petitioner, and to each and every part thereof, on the ground hereinbefore stated, which objection was then and there sustained by the Court on the ground that the said certified copy of the said indictment so introduced on behalf of the Government, the identity of your petitioner as aforesaid being admitted by your petitioner as aforesaid, was conclusive evidence of the existence of every fact stated in the indictment, including the averments that the conspiracies alleged in the said indictment were engaged in in the Middle District of Tennessee, and that therefore said evidence or any evidence offered by and on behalf of your petitioner to controvert, contradict or disprove the averments of the said indictment in that behalf, or any or either of them, was incompetent and inadmissible; and the said Judge, then and there, on the grounds aforesaid, excluded and refused to receive said evidence so offered on

behalf of your petitioner, or any part thereof, to which ruling of the Judge, your petitioner then and there, by his counsel, duly excepted.

7.

That thereupon the said Judge, upon the complaint and upon the evidence so introduced for and on behalf of the Government as aforesaid, made and signed a certain order reciting his said rulings as aforesaid and ordering as in said order appears, which said order is as follows:

9 THE UNITED STATES OF AMERICA,
Eastern District of Virginia:

THE UNITED STATES
vs.
SAMUEL T. MORGAN.

This is an application under the provisions of section 1014 of the United States Revised Statutes for a warrant for the removal of Samuel T. Morgan to the Middle District of Tennessee and comes before me as follows:

The District Attorney for this District, together with Mr. E. T. Sanford, Counsel for the United States, presented to me, a verified complaint of Morgan Treat, United States Marshal for this District, with the certified copy of an indictment filed on May 25th, 1906, in the Circuit Court of the United States for the Middle District of Tennessee in the case of the United States *vs.* Virginia-Carolina Chemical Company and other defendants, including among such defendants, the said Samuel T. Morgan.

Said complaint and copy of said indictment are made parts of this order.

Upon the exhibition of this indictment and affidavit and the *ex parte* motion of the Counsel for the United States, I made an order for the arrest of said Samuel T. Morgan and his production before me.

This order was duly executed by the said Marshal, who arrested the said Samuel T. Morgan and brought him before me in Richmond on this 14th day of July, 1906, as shown by his return. When the accused was so brought before me it was moved by the Counsel for the United States that inasmuch as the indictment
10 charged offenses against the United States triable in the Circuit Court of said United States for the Middle District of Tennessee, and the identity of the defendant was admitted, that an order be forthwith made for the commitment of said Samuel T. Morgan for trial before said Circuit Court.

This motion was made upon the certified copy of the indictment without any further testimony, the identity of the party arrested and brought before me *with* the Samuel T. Morgan mentioned in the indictment being admitted.

And thereupon the defendant, Samuel T. Morgan, offered himself as a witness in his own behalf, and being about to be sworn, the

United States, by its Counsel, thereupon objected to the witness being sworn, or to any testimony being given in rebuttal of the indictment in these proceedings, on the ground that the identity of the defendant being admitted, inasmuch as the indictment on its face charges offenses against the United States committed and triable in the jurisdiction in which the defendant stands indicted, no evidence is admissible here to impeach the indictment, and the order of commitment should be made without other proof.

The defendant's counsel thereupon offered to prove by the defendant, and other witnesses then and there present that the Circuit Court for the Middle District of Tennessee had no jurisdiction over the person of said defendant touching the offense charged in said indictment, in that defendant and said other witnesses would, if permitted, testify that he was not on the 8th day of July, 1903, or during the period between the 8th day of July, 1903 and the 1st day of Sept. 1905, in the state of Tennessee or in the Middle District of Tennessee, and that he has not been in said Middle District of Tennessee since June 1900; that he did not enter, assent to, join, or engage in the conspiracies in the indictment mentioned, or any or either of them within the Middle District of Tennessee,
11 at the time mentioned therein or at any other time; that he did not, within the period mentioned, or at any other time within the Middle District of Tennessee, do any act or thing to promote or further the said conspiracies in the indictment mentioned, or any of them, or to effect the objects or purposes thereof; that he did not at any time or any place join, assent to, enter or engage in the conspiracies or any of them, engaged in in the Middle District of Tennessee, alleged or averred in said indictment.

Nor has defendant done, or performed, or been engaged in, or a party to the same, or any of them in any other place or places at any other time or times whatsoever.

Thereupon counsel for the Government renewed its objections as aforesaid.

After hearing counsel on both sides, the Court announced its conclusions as follows:—

"The conclusion reached by the Court is that in a proceeding for the arrest and the removal of persons charged with a violation of the laws of the United States pursuant to section 1014 of the Revised Statutes of the United States, before a United States District Judge, sitting in the State of Virginia, in which State there no longer exists the right of a preliminary examination upon a crime charged prior to the trial upon the merits, when said Judge is called upon to act as well in the matter of the apprehension of such persons, as in their removal to the jurisdiction in which they have been indicted, that upon the Government's presentation of a sufficient indictment regularly found by a grand jury in a court of the United States, properly charging the commission of an offense within the district in which such indictment is found, coupled with proof of the identity of the person indicted, it is its duty to properly bail such person for appear-

ance before the court in which he is indicted or cause him
12 to be removed thereto."

Therefore it was ordered that the testimony offered is inadmissible, and will not be received, and I therefore made the following order:

UNITED STATES OF AMERICA,
Eastern District of Virginia, sct:

The within named Samuel T. Morgan, having been brought before me, and identified; and it appearing by a duly authenticated copy of an indictment that he stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," for violation of section one of the act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for violation of section 5440 of the Revised Statutes of the United States, it is ordered that the said Samuel T. Morgan give bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial before said Court under the said indictment; or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee, to be there dealt with according to law.

Richmond, Va., July 14, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

And after said order had been made and the defendant declined to give bond, the Counsel for the United States moved that
13 the warrant do issue directed to the Marshal of this district for the imprisonment and removal of the said Samuel T. Morgan to the Middle District of Tennessee, and his delivery to the custody of the United States Marshal of that District.

On such motion counsel for the said Samuel T. Morgan objected and again offered the said Samuel T. Morgan as a witness, together with the other witnesses here-before referred to, to establish the same matters and facts as hereinbefore stated with regard to the objection to the order for the commitment of the said Samuel T. Morgan, which testimony was again offered and was again objected to by the Counsel for the United States on the same grounds above set forth, and on the further ground that these matters could not now be inquired of in this stage of the proceedings, and was again excluded by the Court, to all of which counsel for the said Samuel T. Morgan then and there duly excepted, and had the exceptions noted and entered.

EDMUND WADDILL, JR., *Judge.*

I therefore issued a warrant directed to the Marshal as follows:

Warrant of Imprisonment and Removal.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ect:*

The President of the United States to the United States Marshal of the Eastern District of Virginia, Greeting:

Whereas it has been made to appear that Samuel T. Morgan stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled: "The United States *vs.* Virginia-Carolina Chemical Company
14 *et al,*" for violation of section one of the act of Congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States; and whereas the said Samuel T. Morgan having been brought before me, and identified; and a certified copy of said indictment furnishing probable cause to believe him guilty as therein charged,, and whereas it was thereupon ordered by me that said defendant giwe bail in the sum of five thousand dollars with one or more sufficient surities for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial under said indictment, or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee to be there dealt*h* with according to law; and the said defendant having failed and refused to give bail as required, therefore;

You are hereby commanded in the name and by the authority of the United States to imprison the said Samuel T. Morgan in accordance with law, and that with all convenient speed you remove him hence to the said Middle District of Tennessee and there surrender him to the Marshal of that District, there to be dealt with according to law.

(Signed) EDMUND WADDILL, JR,
U. S. District Judge for the Eastern District of Virginia.

Richmond, Va., July 14, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

Richmond, Va., July 14th, 1906.

8.

Your petitioner further says that he is advised, and he charges and submits, that under and by virtue of Clause 3, of Section
15 2, of Article 3, of the Constitution of the United States, and of the Sixth Amendment to the said Constitution, your petition- is entitled to be tried and can only be indicted and tried for any alleged offenses against the Laws of the United States, in the State and District in which the offense, which the indictment charges, was committed; that the said supposed offenses in the said indictment mentioned and charged, were not, nor was any or either of them, committed in the said Middle District of Tennessee; that

none of the alleged acts, transactions, matters or things which are in the said indictment mentioned or referred to as being and constituting the supposed engaging by this defendant in the said alleged conspiracies in the said indictment referred to, or any or either of them, were done or held or took place within the said Middle District of Tennessee, and no alleged act, transaction, matter or thing, in the said indictment mentioned or referred to as being the doing by this defendant of an act to effect the object of said conspiracy was done or held or took place within the Middle District of Tennessee; that this defendant was not on the 8th day of July, 1903, or at any time subsequent to June 1, 1900, in the Middle District of Tennessee that he did not enter, assent to, join or engage — the conspiracies in the indictment mentioned or any of them in the Middle District of Tennessee at the time mentioned, therein, or at any other time; that he did not within the period mentioned or at any other time within the Middle District of Tennessee, do any act or thing, to promote or further the said conspiracies in the indictment mentioned, or any of them, or to effect the objects or purposes of the same; and that he did not at any time or place, join, assent to, enter or engage in the conspiracies or any of them, alleged or averred in said indictment, or do any act in pursuance of the said alleged conspiracies in the said indictment mentioned, or any or either
16 of them, in furtherance of the said alleged conspiracies in said indictment mentioned or any or either of them, or to effect the object of the same, or as an act on the part of your petitioner of engaging in the same.

9.

That thereupon, the United States Attorney moved the commitment of your petitioner to the Marshal of the said District for removal to the Middle District of Tennessee for trial upon the Indictment in the United States Circuit Court for said District, and the said Attorney for the United States thereupon made a motion before the Honorable Edmund Waddill, Jr., Judge, for the issuance of a warrant for the removal of your petitioner to the Middle District of Tennessee for trial as aforesaid in the United States Circuit Court for said District upon the said indictment, and the said motion was allowed, and said warrant was in pursuance thereof issued by the said Judge, and a copy thereof is embraced in the order of the said Judge hereinbefore recited as and made a part hereof. That thereupon the said Marshal of the Eastern District of Virginia, to whom the said warrant was directed, took your petitioner into custody upon the said warrant and now holds your petitioner thereunder and threatens to take and remove your petitioner to the Middle District of Tennessee, as directed by the said warrant and will do so, unless your Honor shall issue the writ of *Habeas Corpus* herein prayed for. Your petitioner further says that in case your petitioner is removed under the said warrant to the said Middle District of Tennessee for trial upon said indictment and is there held for trial and tried upon said indictment, your petitioner will not be tried within the District in which the said alleged offenses charged in

the said indictment were committed, as required by the Sixth
17 Amendment to the Constitution of the United States, and by Clause 3, of Section 2, of Article 3 of said Constitution, and will be tried in violation of his rights under said provisions of the said Constitution. Your petitioner further says that he is advised, and he charges, that the said indictment does not charge the commission by your petitioner of any offense against the Laws of the United States, and that same is in that behalf insufficient and void.

10.

That the imprisonment and detention of your petitioner is without authority of law, and the said proceedings before said United States District Judge are illegal and the said warrant of removal was illegally issued and in violation of Article 3, Section 2, of the Federal Constitution, and of the Sixth Amendment to the said Constitution; and that then and there by the said rulings of the said District Judge, in the exclusion of the said evidence and in holding that the said certified copy of the Indictment was conclusive evidence as aforesaid, and in refusing to permit your petitioner to introduce any evidence on his behalf, as aforesaid, your petitioner was deprived of rights secured to him by the said provisions of the said Constitution and by Section 1014 of the Revised Statutes, and was and is by said Morgan Treat, United States Marshal, deprived of his liberty without due process of law.

Wherefore your petitioner prays that a writ of *Habeas Corpus* be issued, directed to the said United States Marshal of the Eastern District of Virginia, who has your petitioner in custody, demanding him to bring the body of your petitioner before this Court forthwith; and further that a writ of Certiorari be directed to the said Honorable Edmund Waddill, Jr., Judge as aforesaid, commanding that he return all proceedings against this petitioner to this court forth-
18 with, for such action as may be proper in the premises.

S. T. MORGAN.
JOHN PICKRELL, *Att'y.*

JOHN J. VERTREES,
H. A. M. SMITH,
JAMES C. BRADFORD,
MARCELLUS GREEN,
Counsel.

UNITED STATES OF AMERICA,
Eastern District of Virginia, County of Henrico, ss:

S. T. Morgan being duly sworn, deposes and says that he has read the foregoing petition, and knows the contents thereof, and that the same is in all respects true.

S. T. MORGAN.

Sworn to and subscribed to before me this 14th day of July, 1906.
JOSEPH P. BRADY,
Clerk U. S. Circuit Court.

19 EXHIBIT "A."

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

On this 14th day of July, A. D. 1906, at the City of Richmond, in the said District, before the Honorable Edmund Waddill, Jr., Judge of the District Court of the United States of America for the said District, comes Morgan Treat, United States Marshal in and for the said District, and upon his oath complains and says: that he has good cause to believe and does firm- believe that Samuel T. Morgan of Richmond, Va., stands indicted by the grand jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said Samuel T. Morgan on the eighth day of July in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, being during said period President of the Virginia-Carolina Chemical Co., a corporation existing under and by the laws of the State of New Jersey did in the said Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several states of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violations of the provisions of section 5440 of the Revised Statutes of the United States, the said Samuel T. Morgan did unlawfully conspire with divers other persons and corporations to commit an offense against the United States, to-wit, the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States, all as more fully set out
20 in an indictment filed in the said Circuit Court of the United States in and for the Middle District of Tennessee on May 25, 1906, in cause No. 963, entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," a certified copy of which indictment is hereto attached and made a part of this complaint; and complainant therefore charges that the said Samuel T. Morgan did commit the said offenses against the United States in manner and form as set forth in said indictment.

Complainant furthermore avers upon information and belief that in pursuance of an order of said Circuit Court of the United States for the Middle District of Tennessee a bench warrant has been issued from said Court for the arrest of said Samuel T. Morgan and delivered to the Marshal of said Court, who after due search has returned said warrant "not found" in said Middle District of Tennessee; and that said Samuel T. Morgan is now believed to be within the Eastern District of Virginia, of which district he is a resident.

Wherefore this complainant prays that the said Samuel T. Morgan may be arrested and imprisoned and removed or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee, and further dealt with according to law.

MORGAN TREAT, *Marshal.*

Subscribed and sworn to before me by the above named Morgan Treat the day and year first above written.

EDMUND WADDILL, Jr.,
U. S. District Judge.

Richmond, Va., July 14, 1906.

21 (EXHIBIT "B.")

UNITED STATES OF AMERICA, *Eastern District of Virginia, set:*

To the Marshal of the Eastern District of Virginia, Greeting:

Whereas complaint in writing, on oath, has been made to me charging that Samuel T. Morgan of Richmond, Va., stands indicted by the grand jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said Samuel T. Morgan on the eighth day of July, in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, did in the Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said Samuel T. Morgan did unlawfully conspire with divers other persons and corporations to commit an *affense* against the United States, to-wit: the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States, and application has been made to me that the said Samuel T. Morgan may be arrested and imprisoned and removed, or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee;

Now therefore, you are hereby commanded to arrest the said Samuel T. Morgan if he be found within your said District, and bring him forthwith before me at my Chambers in Richmond,
22 in order that he may be dealt with according to law.

EDMUND WADDILL, Jr.,
District Judge.

Richmond, July 14, 1906.

Pursuant to the within writ, I have taken the defendant Samuel T. Morgan into custody and now have him before Hon. Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia.

MORGAN TREAT,
United States Marshal.

July 14, 1906.

23 EXHIBIT C.

In the Circuit Court of the United States of America for the Middle District of Tennessee, of the April Term, in the Year of Our Lord Nineteen Hundred and Six.

MIDDLE DISTRICT OF TENNESSEE, *sct:*

The grand jurors for the United States of America, inquiring for the Middle District of Tennessee, upon their oath present, that before and on the eighth day of July, in the year of our Lord nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year of our Lord nineteen hundred and five, the following named corporations, respectively organized and existing under and authorized by the laws of the several States and of the foreign country here named in connection with them, and hereafter in this indictment called corporation defendants, to wit, the Virginia-Carolina Chemical Company, of New Jersey, Armour and Company, of Illinois, the Acme Manufacturing Company, of North Carolina, the Alabama Chemical Company, of New Jersey, the Anderson Phosphate & Oil Company, of South Carolina, the Ashepoo Fertilizer Company, of South Carolina, the Blackshear Manufacturing Company, of Georgia, the Etiwan Fertilizer Company, of South Carolina, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, The Furman Farm Improvement Company, of Georgia, the Goulding Fertilizer Company, Limited, of Great Britain and Ireland, The Goulding Fertilizer Company, of Florida, the Gulfport Cotton Oil, Fertilizer & Manufacturing Company, of Georgia, the Home Mixture Guano Company, of Georgia, the Jackson Fertilizer Company, of Mississippi, the Marietta Fertilizer Company, of Georgia, the Meridian Fertilizer Factory, of Mississippi, the National Fertilizer Company, of Tennessee, the New Orleans Acid and Fertilizer Company, of New Jersey, the Old Dominion Guano Company, of Georgia, the Planters Chemical Company, of Alabama, the
24 Read Phosphate Company, of West Virginia, the F. S. Royster Guano Company, of Virginia, the Savannah Guano Company, of Georgia, the Southern States Phosphate and Fertilizer Company, of Georgia, the Standard Chemical & Oil Company, of Alabama, the Standard Guano and Chemical Manufacturing Company, of Louisiana, Swift & Company, of Illinois, the Tennessee Chemical Company, of Tennessee, and the Tennessee Valley Fertilizer Company, of Alabama, and certain firms, to wit, the firm of A. D. Adair and McCarty Brothers and the firm of Wilcox, Ives & Company, did carry on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereafter in this indictment called the States of the conspiracy, as wholesale dealers in complete and alkaline fertilizers and in acid phosphates, nitrates, and potash salts suitable for fertilizers, which then were useful and valuable

articles of merchandise, indispensable for use on the soil of the said States of the conspiracy in order that the staple crops of those States might be raised therefrom; that the following named persons, hereafter in this indictment called individual defendants, to wit, Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, of the said Virginia-Carolina Chemical Company, and J. Rice Smith, agent and manager of the said Virginia-Carolina Chemical Company, and president of the Georgia Chemical Works hereinafter mentioned, Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, Fred G. Brown, president and treasurer of the said Anderson Phosphate & Oil Company, Frank Burbidge, president, and William J. McCormack, treasurer, of the said Etiwan Fertilizer Company, George Braden, president of the said Federal Chemical Company, of Delaware, and also of the said Federal Chemical Company, of Kentucky, Augustus D. Adair and James D. McCarty, officers and agents of the said Furman Farm Improvement Company and members of the said firm of A. D. Adair and McCarty Brothers, William DeC. Kessler, secretary and treasurer of the said Goulding Fertilizer Company, Limited, James G. Tinsley, president of the said Marietta Fertilizer Company and vice-president of the said Tennessee Chemical Company, William D. Rhea, general manager of the said National Fertilizer Company, William L. Peel, president of the said Old Dominion Guano Company, Abram C. Read, vice-president and general manager, and Isaac Mayo Read, agent, of the said Read Phosphate Company, Frank S. Royster, president, and Charles F. Burroughs, vice-president, of the said F. S. Royster Guano Company, A. J. Ives, whose Christian name is to the said grand jurors unknown, secretary and treasurer of the said Savannah Guano Company and a member of the said firm of Wilcox, Ives & Company, T. Porter Fleming, vice-president of the said Southern States Phosphate and Fertilizer Company, and T. Garland Tinsley, president and treasurer of the said Tennessee Chemical Company, in their said several capacities as officers, managers, agents, and attorneys of the said corporation defendants and members of the said firms, and on behalf of those corporations and firms, during the period of time in this indictment first aforesaid, did carry on the business aforesaid; that in so carrying on the said business the said defendants, that is to say, the said corporation and individual defendants, did sell and deliver large quantities of the said merchandise within the limits of the said States of the conspiracy from the respective places of business of the said corporation defendants and the said firms, located at different points within those States, to retail dealers in and consumers of such merchandise, in such States respectively, and did also ship large quanti-es of the same from their respective places of business, located in the said States of the conspiracy and also in the States of Virginia, Illinois, and Kentucky, into and through other of the said States than those in which their said places of business were located; that in so carrying on the said busi-

ness and shipping the said merchandise from one of the said States into and through another or others thereof, the said defendants, during the period aforesaid, were engaged in trade and commerce among the States of this Union within the meaning of the Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in so carrying on the said business, trade and commerce, the said Virginia-Carolina Chemical Company and the said Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, and J. Rice Smith, agent and manager, of the said Virginia-Carolina Chemical Company, did make use of and operate a portion of their said business, trade and commerce through each of certain other corporations, to wit, the American Fertilizer Company, of Virginia, the Birmingham Fertilizer Company, of Alabama, the Coweta Fertilizer Company, of Georgia, the Georgia Chemical Works, of Georgia, the Navassa Guano Company, of North Carolina, of either the whole or a majority of the capital stock of which said corporations respectively the said Virginia-Carolina Chemical Company was the owner;

26 that in so carrying on the said business, trade and commerce, the said Armour and Company and the said Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, did make use of and operate all of their said business, trade and commerce through a certain other corporation called the Tuscarora Fertilizer Company, of New Jersey, and a certain trade name, to wit, the trade name of Armour Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Furman Farm Improvement Company and the said firm of A. D. Adair and McCarty Brothers did make use of and operate a portion of their said business trade, and commerce under the trade name of Chickamauga Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Federal Chemical Company, of Delaware, and the said Federal Chemical Company of Kentucky, did make use of, and operate a portion of their said business, trade and commerce through, the names of Century Phosphate Company, Fox Chemical Company, Branch Globe Fertilizer Company, Branch and Tennessee Phosphate Company; that in so carrying on the said business, trade and commerce, the said National Fertilizer Company did make use of, and operate a portion of its said business, trade and commerce through, the corporate name of American Guano Company and the trade name of Nashville Guano Company; that in so carrying on the said business, trade and commerce, the said Read Phosphate Company did make use of, and operate a portion of its said business, trade and commerce through the corporate name of Empire Guano Company; that in so carrying on the said business, trade and commerce, the said F. S. Royster Guano Company did make use of, and operate a portion of its said business, trade and commerce through the trade name of Atlantic Chemical Company and the corporate name of Columbia Guano Company; that in so carrying on the said business, trade and

commerce, the said Swift and Company did make use of, and operate the whole of its said business, trade and commerce through, the trade name of Swift Fertilizer Works; and that in so carrying on the said business, trade and commerce, the said Tennessee Chemical Company did make use of, and operate a portion of its said business, trade and commerce through, the trade name of Continental Fertilizer Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that of the total volume of such business, trade and commerce then so being carried on by the said defendants and their competitors, the said defendants together had and controlled the principal part, that is to say, ninety per centum thereof; and
27 that because the said corporation defendants and the said firms were in fact separate and distinct from each other, they should have conducted their interstate trade and commerce strictly in competition with each other, during the said period, and then would have so conducted the same but for the unlawful conspiracy in restraint of the said business, trade and commerce in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, at and within the said Middle District of Tennessee, in violation of the provisions of said section one of the said Act of Congress, unlawfully did knowingly engage in a conspiracy in restraint of the said business, trade and commerce, so then being carried on by them in the manner aforesaid, whereby the said business, trade and commerce was restrained in the several ways and by the several means now here set forth and described, that is to say:

Competition as to the prices at which the said merchandise was sold and delivered by the said corporation defendants and the said firms in the said States of the conspiracy, which before the period of time in this indictment first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was prevented and destroyed by the said defendant from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them styled "current, reasonable market prices," for the said merchandise so sold and delivered by the said corporation defendants and the said firms in those States, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so fixed and caused to be fixed; which said uniform and non-competitive prices were prices greatly in excess of the prices which but for the said unlawful conspiracy would at such times have prevailed for the said merchandise in the said business, trade and commerce, and were prices therefore unreasonable, and were a tax on the people of the said States of the said conspiracy amounting to a large sum of money, to wit, four million dollars, annually during the continuance of the same.

For and on account of such quantity of the said merchandise as was sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts allotted and caused

to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and
28 delivered in excess, was, by the corporation defendants and firms so selling and delivering the same, paid into a common fund, held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, compensated, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as sold and delivered less than the amounts so allotted to them respectively, so it was not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy that each of the said corporation defendants and of the said firms also paid into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment to be the absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm, in disposing of its said allotment in carrying on the said business, trade and commerce, on its part faithfully should exercise every reasonable effort and due business diligence to maintain the prices so fixed and caused to be fixed as aforesaid and pay into the said fund the sum accruing to the same on account of its said excess sales, in which case an equal amount was returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also made uniform and non-competitive as between all of the said corporation defendants and the said firms, in the said business, trade and commerce, among the said States of the conspiracy.

As a convenient intermediary and common agent between the said corporation defendants and the said firms, respectively and as a means of securing their co-operation in carrying out the said unlawful conspiracy, the said defendants made use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company, Limited, was also allowed and required to collect, hold, use and distribute the said fund
29 arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that, in pursuance of the said unlawful conspiracy,

and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of September, in the year nineteen hundred and three, during the period of time aforesaid, at and within the City of New York, in the State of New York, unlawfully did knowingly deposit with the Continental Trust Company, of the said City of New York, the sum of twenty-six thousand dollars, in connection with the purchase *of* by the said trust company on behalf of the said Virginia-Carolina Chemical Company, and in the name of one Montrose Stuart, a clerk in the office of the said trust company, of twenty-six hundred shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Samuel T. Morgan, on the seventh day of October, in the same year nineteen hundred and three, and during the period of time aforesaid, at and within the said city of New York, in the State of New York, unlawfully did deliver to the said William DeC. Kessler, Vice-President of the said Colonial Development Company, Limited, three checks drawn by the said Virginia-Carolina Chemical Company, one upon the National City Bank, of New York City aforesaid, for eighty thousand dollars, another on the Bank of America, of New York City aforesaid, for fifty thousand dollars, and the other on the National Park Bank, of New York City aforesaid, for thirty-five thousand and four hundred and sixty-eight dollars, aggregating one hundred and sixty-five thousand and four hundred and sixty-eight dollars, as and for a payment, by the said Virginia-Carolina Chemical Company, to the said Colonial Development Company, Limited, of twenty cents a ton on its allotment under the said unlawful conspiracy; he the said Samuel T. Morgan, when and where he so as aforesaid delivered the said checks to the said William DeC. Kessler, well knowing the character and purpose of the same, and well knowing that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as acts on their parts respectively of engaging in the same, the said Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, on the seventeenth day of September, in the year nineteen hundred and three, and during the period aforesaid, at the said City of New York, in the said State of New York, unlawfully did meet together to discuss and further the object of the said unlawful conspiracy; they the said Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred G. Brown,

Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, when and where they so as aforesaid met together, each well knowing the character and purpose of the said meeting, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank E. Wilcox, on the first day of November, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did deliver to one W. W. Perkins, Secretary of the said American Fertilizing Company, a certain document, too voluminous to be here set forth, stating certain prices and terms of sale, fixed in pursuance of the said unlawful conspiracy, for the said fetilizer merchandise, in the States of North Carolina, South Carolina, Georgia, Florida, Alabama and Tennessee, for the spring season of the year nineteen hundred and four; he the said Frank E. Wilcox at the time and place when and where he so as aforesaid delivered the said document to the said W. W. Perkins, well knowing the character of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, and during the period of time aforesaid, at the town of Decherd, in the said Middle District of Tennessee, by and through one
31 F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, and during the period aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, and during the period of time aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at the City of Nashville, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, a certain notice of shipment, partly written and partly printed, in the words and figures following, that is to say:

"The Armour Fertilizer Works
Owned and operated by
Armour & Company.
Prudential Building,
Atlanta, Ga.

Duplicate.
To be Mailed with Bill of
Lading to Customer.

No. 612
March 10", 1905.

32 We have this day shipped from Nashville, Tenn. storage
To Bramlitt Hdw Co.
Corinth, Miss.
Charge to S. D. Bramlitt. Address same.

No. Bags.	Weight of bags.	Brand.	Tons.
400	100	King Cotton 8.2.2	20

Order No. 4613.
Bill of lading herewith. Invoice will be mailed from Chicago.
Above quantities shipped 3 10 1905. Freight Terms.....
Car No. 13619. Via L. & N.
Charges prepaid $48.00.
THE ARMOUR FERTILIZER WORKS,
Per ALEX. LESLIE."

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Austin B. Carpenter, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Assistant Secretary of the said Colonial Development Company, unlawfully did sign his name, to wit, "A. B. Carpenter, Asst. Secy." on the face of a certain stock certificate, to wit, certificate No 28, showing the ownership by one Thomas M. Green of fifty-one shares of the capital stock of the said Colonial Development Company; he the said Austin B. Carpenter, at the time and
33 place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his said act to be done in pursuance and to effect the object of the said conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles H. MacDowell, on the twelfth day of January, in the year nineteen hundred and five, and during the period of time aforesaid, at and within the city of Chicago, in the State of Illinois, unlawfully did sign his name, to-wit, "C. H. MacDowell," under the name of the Armour Fertilizer Works, and after the word "by" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Armour and Company, under the trade name of "Armour Fertilizer Works," offered to furnish and deliver at Corinth, in the State of Mississippi to one S. D. Bramlitt, twenty tons of the fertilizer merchandise aforesaid; he the said Charles H. MacDowell, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of gaging in the same, the said Alabama Chemical Company, on the the first day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the city of Wilmington, in the State of North Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of six hundred and twenty

dollars for sixty-two shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Alabama Chemical Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Montgomery, in the State of Alabama, unlawfully did knowingly deliver its certain check drawn upon the Merchants and Planters-Farley National Bank, Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of William DeC. Kessler, as payment for forty-two shares of the capital stock of the said Colonial Development Company, Limited;

34 And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Anderson Phosphate and Oil Company, on the twenty-ninth day of August, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Anderson, in the State of South Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of five hundred and eighty dollars for fifty-eight shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly buy from the Carolina Savings Bank, Charleston, South Carolina, a draft upon the Citizens National Bank, of New York City, for the payment of the sum of seven thousand nine hundred and forty-nine dollars and forty-three cents to the order of one Frank E. Taylor, Vice-President and General Manager of the said Ashepoo Fertilizer Company;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and *and* during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly cause the said Frank E. Taylor to endorse the check last above mentioned payable to the order of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Blackshear Manufacturing Company, on the seventeenth day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Blackshear, in the State of Georgia, unlawfully did knowingly deliver to the Atlantic Coast Line Railroad Company stx tons of the fertilizer merchandise aforesaid, consigned and to be shipped

to the firm of E. J. Blume & Company, at Live Oak, in the State of Florida;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Etiwan Fertilizer Company, on the fourteenth day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Cairo, in the State of Georgia, by and through one P. H. Seabrook, its agent, unlawfully did knowingly offer and agree to furnish and deliver to the firm of Wight Brothers, of Cairo aforesaid, thirty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank Burbidge, on the first day of July, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Charleston, in the State of South Carolina, having then and there in his hands a certain check, dated the thirtieth day of June, in the same year nineteen hundred and four, drawn by the said Alabama Chemical Company upon the Continental National Bank of Chicago, for the payment of eleven hundred and forty-two dollars and ninety-seven cents to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Pay to order of People's National Bank, Colonial Development Co., Ltd., F. Burbidge, Pres."; he the said Frank Burbidge then and there, to wit, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William J. McCormack, on the ninth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, having then and there in his hands a certain check dated the fifth day of September, in the same year, drawn by the said New Orleans Acid & Fertilizer Company, upon the Louisiana National Bank of New Orleans, for the payment of seven hundred and fifty dollars to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Colonial Developm't Co., Frank Burbidge, Sec. & Treas., per Wm. J. McCormack"; he the said William J. McCormack, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of en-

gaging in the same, the said Federal Chemical Company, of
36 Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the said State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, and during the period of time aforesaid, at Springfield afore-
37 said, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff & Williams, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Goulding Fertilizer Company, Limited, on the twenty-fifth day of November, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the

town of Cullman, in the State of Alabama, by and through one W. E. Craig, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one John Sutterer, at Cullman aforesaid, three hundred and seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the sixth day of September, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Pensacola, in the State of Florida, having then and there in his hands a certain check, dated the fifth day of September, in the same year nineteen hundred and three, drawn by the said Alabama Chemical Company upon Merchandise Merchants and Planters-Farley National Bank of Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of W. DeC. Kessler, unlawfully did sign his name, to wit, "W. DeC. Kessler," upon the back of the said check next below the written words "Pay to the order of Colonial Development Co."; he the said William DeC. Kessler then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the back of the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the said fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Vice-President of the said Colonial Development Company, unlawfully did sign his name, to wit, "W. DeC. Kessler, V. P." on the face of the said stock certificate in the name of Thomas M. Green; he the said William DeC. Kessler, at the time and place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his act to be done in pursuance and to effect the object of
38 the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Gulfport Cotton Oil Fertilizer and Manufacturing Company, on the twenty-seventh day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-four hundred dollars for and in respect of twelve thousand tons of the fertilizer merchandise aforesaid, allotted to the said Gulfport Cotton Oil, Fertilizer and Manufacturing Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Home Mixture Guano Company, on a day in the year nineteen hundred and three to the said grand jurors

unknown, and during the period of time aforesaid, at and within the City of Columbus, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Jackson Fertilizer Company, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Jackson, in the State of Mississippi, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Marietta Fertilizer Company, on the twenty-first day of July, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by and through one L. W. Reeves, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one James A. Boyd, at Jonesboro aforesaid, seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said James G. Tinsley, on the
39 third day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Nashville, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley; he the said James G. Tinsley, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Meridian Fertilizer Factory, on the seventh day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Cullman, in the State of Alabama, by its agent E. L. Robbins, unlawfully did knowingly offer to furnish to C. A. Steifelmeyer one hundred and fifty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said National Fertilizer Company, on the

second day of March, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge; he the said William D. Rhea, then and there, to wit, at the time and place when and where he so directed and required the said E. W. Connell to sign his name as aforesaid to the said check, well knowing the nature and contents of the said check, and that his said direction and requirement were in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid; he the said William D. Rhea then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the said document, well knowing the character of the same, and well knowing his said act to be one done in pursuance of and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said New Orleans Acid & Fertilizer Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did

knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars for seventy-five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Old Dominion Guano Company, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-six hundred and twenty dollars, for and
41 in respect of thirteen thousand one hundred tons of the fertilizer merchandise aforesaid, allotted to the said Old Dominion Guano Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William L. Peel, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did sign his name, to wit, "W. L. Peel, Prest.," to a certain check, to wit, a check drawn by the Maddox-Rucker Banking Company upon the National Park Bank, New York, for the payment of twenty-six hundred and twenty dollars to the order of the said Colonial Development Company, Limited; he the said William L. Peel, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Planters Chemical Company, on the thirtieth day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Talladega, in the State of Alabama, unlawfully did knowingly pay the said Colonial Development Company, Limited, the sum of fifty dollars for five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Read Phosphate Company, on the fifth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Hartselle, in the State of Alabama, unlawfully did knowingly offer to sell and deliver to one S. E. Stewart, at that place, forty to fifty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and

three, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too
42 voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid; he the said Abram C. Read, then and there, to wit, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved, Nashville Tenn. Dec. 6 1904," and above the word "Manager," upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof, offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid; he the said Abram C. Read then and there, to wit, at the time and place when and where he so as aforesaid signed his name to the last mentioned document, well knowing the character and contents of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said F. S. Royster Guano Company, on the thirtieth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine thousand three hundred and fourteen dollars and seventy-four cents, on account of such merchandise sold and delivered by the said F. S. Royster Guano Company in excess of its allotment under the aforesaid unlawful conspiracy;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles F. Burroughs, on the twenty-fifth day of March, in the year nineteen hundred and four,
43 and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did sign

his name, to wit, "C. F. Burroughs," under the word "countersigned" and above the words "Vice-President" upon the face of a certain document, partly written and partly printed, too voluminous to be here set forth in full, wherein and whereby the said F. S. Royster Guano Company and he the said Charles F. Burroughs, as Vice-President thereof, offered to sell to one J. W. Carter, and to deliver to him at Maxton, in the State of North Carolina, ten tons of the fertilizer merchandise aforesaid; he the said Charles F. Burroughs, at the time and place when and where he so as aforesaid signed his name to the said document, well knowing the character and contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Savannah Guano Company, on the second day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did knowingly pay to the said Frank Burbidge the sum of nine hundred and forty dollars for ninety-four shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said A. J. Ives, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did sign his name, to wit, "A. J. Ives, Secty. & Treas." to a certain check, to wit, a check drawn by the Savannah Guano Company upon the Merchants National Bank, Savannah, Georgia, for the payment of three thousand one hundred and forty dollars to the order of New York Exchange; he the said A. J. Ives, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Southern States Phosphate and Fertilizer Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of the time afore-
44 said, at and within the City of Augusta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine hundred and sixty dollars for ninety-six shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Chemical and Oil Company, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the

town of Troy, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand dollars for and in respect of one-half of forty thousand tons of the fertilizer merchandise aforesaid allotted to the said Standard Chemical and Oil Company, as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Guano and Chemical Manufacturing Company, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand seven hundred and seventy-four dollars and seventy-seven cents as a partial payment for and in respect of the fertilizer merchandise aforesaid, allotted to the said Standard Guano and Chemical Manufacturing Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Swift & Company, on the first day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by its agent, J. Z. Elliott, unlawfully did knowingly offer to furnish to one W. P. Diehl thirty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

And that, further in pursuance of the said unlawful con-
45 spiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes & Bro., at Oxford, Alabama, a certain letter of the tenor following, to wit:

T. G. Tinsley, Pres't & Treas. Allen Hardison, Sec'y.

Tennessee Chemical Company, Manufacturers and Importers of Ox Fertilizers.

NASHVILLE, TENN., *May* 17–'05.

Messrs. D. P. Haynes & Bro., Oxford, Ala.

DEAR SIRS: I am in receipt of your favor of the 16th and beg to state we could not allow any discount further than the 5 % for cash

settlement. We will be glad to have you settle in cash on this basis if you desire to do so, but are sorry to state we are not in a position to offer you any further discount.

Yours truly, T. G. TINSLEY, *President;*

he the said T. Garland Tinsley then and there, to wit, at the time and place when and where he so as aforesaid caused the said letter to be written and sent as aforesaid, well knowing that the same was so written and sent in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part in engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Company, James G. Tinsley. By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee
46 Chemical Company upon the Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley; he the said T. Garland Tinsley, at the same time and place when and where he so as aforesaid wrote the said endorsement on the back of the said check, well knowing the contents of the same, and that his said act was done in pursuance of and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Valley Fertilizer Company, on the second day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Florence, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars, as a partial payment for and in respect of fertilizer merchandise, aforesaid, allotted to the said Tennessee Valley Fertilizer Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on their parts respectively, of engaging in the same, the said Frank Burbidge, Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson, during the period of time aforesaid, at the City of New York, in the State of New York, the City of Washington, in the District of Columbia, Old Point Comfort and Hot Springs, in the State of Virginia, St. Augustine, in the State of Florida, and French Lick Springs, in the State of Indiana, unlawfully did as officers, directors and attorney of the said Colonial Development Company, Limited,

meet together for the purpose of discussing and attending to the affairs of the said Colonial Development Company, Limited; they the said Frank Burbidge, Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson when and where they so met together aforesaid, well knowing the purpose of such meetings, and well knowing their acts in the premises to be acts in pursuance and to effect the object of the said unlawful conspiracy, and that the same were done as acts on their parts respectively of engaging in the said unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, during the period of time aforesaid, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form aforesaid, unlawfully did engage in a conspiracy in
47 restraint of trade and commerce among the several States;

Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

SECOND COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the first count described, and were so engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord, nineteen hundred and three at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the grand jurors unknown, and engage in a conspiracy, among themselves and with such other unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid; which said unlawful conspiracy in this count mentioned then and there was a conspiracy for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described; that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the

said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing and causing to be fixed, uniform and non-competitive prices, by them to be styled "current, reasonable market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such times prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

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For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum ther-of during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be the absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its excess

sales, in which case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of pay-
49 ment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their cooperation in carrying out the said unlawful conspiracy, the said defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, and as being acts on the part of the said corporation and individual defendants respectively of engaging in that conspiracy, are now here in this count charged to be acts by the same corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned, and to have been acts on the part of the said corporation and individual defendants respectively of engaging in the last-named unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a con-
50 spiracy in restraint of trade and commerce among the several States; against the peace and dignity of the said United

States, and contrary to the form of the statute of the same in such case made and provided.

THIRD COUNT.

And the grand jurors, aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the said first count described, and so were engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the said United States, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the said United States, to wit, the offense of engaging in a combination, among themselves and with such other unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid, which said unlawful conspiracy in this count mentioned then and there was a conspiracy to engage in a combination for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described, that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and com-
51 merce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them to be styled "current, reasonable market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be

prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such times prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful combination and ninety per centum thereof during the second year; it being a further element of the said unlawful combination in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on the said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the
52 same on account of its excess sales, in which case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their cooperation in carrying out the said unlawful combination, the said defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and

the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful combination; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, are now here in this count charged to be acts by the said corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy to commit an offense against the said United States: Against
53 the peace and dignity of the said United States; Against the peace and dignity of the said United States, and contrary to the form of the statute in such case made and provided.

FOURTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names

and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State, but by way of and partly through another State, and were severally engaged both in local com-
54 merce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the aforesaid business and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section one of the said Act of Congress, approved July 2, 1890, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, The Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company of Delaware, the Federal Chemical

Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count,
55 to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly engage in a conspiracy in restraint of commerce among the several States, to wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, whereby the said commerce was restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise which were maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the period of such unlawful conspiracy, and greatly in excess of those prices which would have otherwise prevailed in the said States during the period of such unlawful conspiracy, and were therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby earnest money was given to secure the maintenance of such prices and compensation was made to those losing volume of business by reason of maintaining such prices, that is to say:

There was from time to time allotted to each of said corporation defendants and firms an amount of tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms paid into a common fund the sum

of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sums becoming due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which faithfully maintained such uniform and non-competitive prices and failed to make sales
56 and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but sold and delivered through itself and its subsidiary companies a minimum amount thereof required as a guarantee of good faith, received from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid fell short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies made such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, as a penalty upon such excess sales, paid into such common fund like amounts per ton on the said respective kinds of fertilizers, divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means whereby said unlawful conspiracy was effected, a corporation of Ontario, Canada, whose stock was apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was the common fund aforesaid into which was paid the earnest money and penalties on excess sales aforesaid, and from which was paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which the same was operated and directed.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that within the period aforesaid of said unlawful conspiracy in this count of this indictment mentioned, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and did do and perform such acts as acts on their respective parts of engaging in the said unlawful conspiracy in this count of this indictment mentioned, and that each of such defendants at the time and place when and where such defendants did and performed the acts hereinafter so set forth in connection with such defendant respectively, then

and there well knew the character of such act and that such
57 act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, and as an act on the part of such defendant in engaging in the same, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year, nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the
58 tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

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In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the

County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit,
60 "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Ten-

nessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec. 6 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abraham C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P.
61 Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said corporation and individual defendants, during the period of time aforesaid, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

Fifth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the

first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and
62 through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the several States of the conspiracy and the said States of Virginia, Illinois and Kentucy, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commence against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, approved July 2, 1890, the said corporation defendants named in the said first count, to wit, the Virginia-Caro-
63 lina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, and engage in a conspiracy among themselves and with such other unknown corporations and persons, in restraint of commerce among the several States, to-wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, by which unlawful conspiracy said commerce was to be restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the

various points of delivery in the said States of the conspiracy,
64 which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy, and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices, that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to make sales and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose
65 treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary and

common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful conspiracy was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that such act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

66 In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one

Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said consiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company,
67 on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Ten-

nessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle
68 District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his, the said E. W. Connell's name as such Treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fer-

tilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read,"
after the words "Approved—Nashville, Tenn., Dec. 6 1904"
69 and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he, the said Abram C. Read as Manager thereof offer-d to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee

Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

70 SIXTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were

severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress approved July 2, 1890, and entitled "An Act to protect
71 trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and in the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section 5440 of the Revised Statutes of the United States, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William
72 J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Wil-

liam D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the United States, to wit, to engage in a combination in restraint of commerce among the several States, namely, a combination in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, and did then and there so conspire to commit the aforesaid offense by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy, and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices; that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to
73 make sales and deliveries of such merchandise through itself and its subsidiary — amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment,

as aforesaid; and on the other hand, each of said corporation defendants and firms which, through itself and its subsidiary companies, should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful combination was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid, the corporation defendants and individual defendants, hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that such act was done in pur-
74 suance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and

four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at West
75 Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid,

consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchan-
76 dise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Arndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day

and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D.
77 Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec. 6 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes

and Bro.," at Oxford, Alabama, that certain letter of the date
78 set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley, By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did conspire to commit an offense against the United States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

ABRAM M. TILLMAN,
United States Attorney.

(Endorsed as follows:) No. 963. United States Circuit Court, Middle District of Tennessee. The United States *vs.* Virginia-Carolina Chemical Company *et als.*

Indictment for violating Act of Congress approved July 2, 1890, and entitled "An Act to Protect Trade and Commerce against unlawful restraints and monopolies," and Section 5440 R. S. U. S.

A True Bill. Robert Q. Stewart, Foreman of the Grand Jury.

Names of Witnesses Sworn and Examined Before the Grand Jury.

J. C. Adams, Henry E. Ahern, Lee Ashcraft, Eugene Atkinson, N. E. Barker, W. F. Barrett, James C. Beck, J. M. Berry, W. W. Bird, L. W. Botts, Clarence Braden, S. D. Bramlitt, A. P. Brantley,
B. D. Brantley, Dewitt Brown, H. C. Brown, Arthur Bussey,
79 Hezekiah Bussey, E. J. Blume, James A. Boyd. William F. Burns, Oscar Bright, J. W. Carter, B. G. Clark, C. W. Comes, E. W. Connell, Charles Earle Currie, R. L. Davis, Joseph Denee, W. P. Diehl, A. M. Dobbs, John V. Dobson, C. H. Drayton, W. L. Dumas, J. B. Duncan, S. Eastland, T. B. Edwards, Culpepper Exum, H. C. Fischer, J. B. Fiser, Albert French, C. A. Gambrill, A. H. George, John E. Gibbs, William Gilchrist, James M. Goldsmith, A. A. Green, E. P. Grice, W. A. Hansel, G. A. Harrington, H. J. Harby, Allen Hardison, L. C. Hayne, J. L. Haynes, D. P. Haynes, R. W. Henderson, P. W. Hendricks, E. R. Hodgson, junior, E. R. Hodgson, senior, J. L. Horn, W. E. Hudson, T. J. Hunt, R. H. John-

ston, T. V. Kessler, E. M. Kirk, Henry Kirn, H. L. Law, Alexander Leslie, J. A. Lindsey, W. Hampton Logan, Harry Luck, John A. Lewis, W. F. McKenzie, Robert F. Maddox, H. W. Malloy, E. R. Manning, H. L. Milligan, J. Allen Moore, M. B. Neece, W. J. Oliver, E. Thomas Orgain, D. B. Osborne, Every M. Paget, W. W. Perkins, Dr. J. D. Plunkett, F. B. Pope, William Price, Charles Rainey, Frederick Rayfield, Isaac W. Read, W. A. Reynolds, I. T. Rhea, W. E. Richards, H. A. Rogers, V. N. Roadstrum, W. G. Sadler, G. W. Sanders, E. M. Sentelle, W. McR. Smith, R. G. Sparrow, J. F. Stackley, C. A. Steifelmeyer, S. E. Stewart, W. B. Stratford, John Sutterer, E. R. Taber, Frank E. Taylor, W. B. Taylor, W. D. Tharin, J. R. Timmerman, J. W. Todd, S. W. Travers, George H. Tucker, E. Van Winkle, J. T. Welch, O. C. Wiley, C. H. Willcox, T. B. Williams, Benjamin L. Willingham, W. S. Wight, E. G. Woodling.

Filed 11:30 A. M., May 25, 1906. H. M. Doak, Clerk, by E. L. Doak, Deputy Clerk. Abram M. Tillman, U. S. Atty.

I, H. M. Doak, Clerk of the Circuit Court of the United States in and for the Middle District of Tennessee, hereby certify that the foregoing is a true, perfect, and complete copy of an indictment filed as thereupon endorsed, etc. In witness whereof I have hereunto signed my name and affixed the seal of said court, at my office, this the 26th day of May, 1906.

[SEAL OF COURT.] H. M. DOAK, *Clerk.*

80 *Order Awarding Writs of Habeas Corpus and Certiorari.*

Filed July 14th, 1906.

In the Matter of the Petition of SAMUEL T. MORGAN for Writs of *Habeas Corpus* and Certiorari.

SAMUEL T. MORGAN, Petitioner.

versus

MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

Let the writ of *habeas corpus*, in due form of law, as prayed for in the within petition be issued directed to Morgan Treat, United States Marshal for the Eastern District of Virginia, commanding him forthwith to make return of said writ and to produce the body of said petitioner, Samuel T. Morgan, before this Court, to be dealt with according to law; and that the writ of certiorari as prayed for in said petition be issued and made returnable forthwith.

Richmond, Va., July 14th, 1906.

NATHAN GOFF,
Presiding Circuit Judge, April Term, 1906.

Writ of Habeas Corpus.

81 UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

To Morgan Treat, United States Marshal for the Eastern District of Virginia, or any of his deputies:

We command you that the body of Samuel T. Morgan in your custody detained, as it is said, together with the day and cause of his caption and detention, you safely have before our Circuit Court of the United States, within and for the District aforesaid, forthwith, to do and receive all and singular those things which the said Circuit Court of the United States, within and for the District aforesaid, shall then and there consider of him in this behalf; and have you then and there this writ.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond, this 14th day of July, in the year of our Lord one thousand nine hundred and six, and of our Independence the 131st year.

[Seal United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Cerk of the Circuit Court of the United States for the Eastern District of Virginia.

Marshal's Return.

To the Circuit Court of the United States for the Eastern District of Virginia:

Morgan Treat, United States Marshal for the said Eastern District of Virginia, to whom the annexed writ is directed, has now before the court the body of Samuel T. Morgan therein named, as thereby commanded. And I certify that the cause of the detention of the said Samuel T. Morgan is a warrant directed to me and issued by the Honorable Edmund Waddill, Jr., Judge, of the said Eastern
82 District of Virginia, on July 14th, 1906, under the provisions of section 1014 of the Revised Statutes of the United States, commanding the imprisonment and removal of the said Samuel T. Morgan to the Middle District of Tennessee for trial in the Circuit Court of the United States for said last mentioned district upon a certain indictment found in said last mentioned court against him, the said Samuel T. Morgan and others, a copy of which warrant of removal is set out in the petition of the said Samuel T. Morgan herein; and that a full, true and correct statement of all the proceedings before the said Judge upon the application for the arrest and commitment of the said Samuel T. Morgan and his removal to said Middle District of Tennessee for trial is contained and set forth in the statement or order of said Judge, a copy of which is set forth in section 7 of the said Samuel T. Morgan's petition and in the documents made a part thereof and therein referred to.

MORGAN TREAT,
U. S. Marshal for the Eastern District of Virginia.

Dated this 14th day of July, A. D. 1906.

Writ of Certiorari.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

The President of the United States of America to the Judge of the District Court of the United States for the Eastern District of Virginia:

83 We being informed that there is now pending before you a suit in which the United States of America is plaintiff and Samuel T. Morgan is defendant; and we being willing, for certain reasons, that the said case and the record and proceedings therein should be certified by the Judge of the District Court of the United States for the Eastern District of Virginia and removed into the Circuit Court of the United States for the Eastern District of Virginia, sitting at Richmond, Virginia;

We do hereby command you forthwith that you send forthwith to the said Circuit Court of the United States for the Eastern District of Virginia, as aforesaid, the record and proceedings in said case, so that the said Circuit Court of the United States for the Eastern District of Virginia may act thereon as of right and according to law ought to be done.

Witness, The Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond, this 14th day of July, in the year of our Lord one thousand nine hundred and six, and of our Independence the 131st year.

[Seal United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Return of United States District Judge.

The Clerk of the United States District Court is hereby directed to deliver to the Judges of the United States Circuit Court within and for the Eastern District of Virginia the record and proceedings mentioned in the within writ.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

Richmond, Va., July 14", 1906.

84 *Transcript of Proceedings Before Honorable Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia.*

The following proceedings were had before Honorable Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia, at Richmond, Virginia, on the 14th day of July, 1906.

THE UNITED STATES
versus
SAMUEL T. MORGAN.

Writ of Certiorari.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

The President of the United States of America to the Judge of the District Court of the United States for the Eastern District of Virginia:

We being informed that there is now pending before you a suit in which the United States of America is plaintiff and Samuel T. Morgan is defendant; and we being willing, for certain rea-
85 sons, that the said case and the record and proceedings therein should be certified by the Judge of the District Court of the United States for the Eastern District of Virginia and removed into the Circuit Court of the United States for the Eastern District of Virginia, sitting at Richmond, Virginia.

We do hereby command you forthwith that you send forthwith to the said Circuit Court of the United States for the Eastern District of Virginia, as aforesaid, the record and proceedings in said case, so that the said Circuit Court of the United States for the Eastern District of Virginia may act thereon as of right and according to law ought to be done.

Witness, The Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond, this 14th day of July, in the year of our Lord one thousand nine hundred and six, and of our Independence the 131st year.

[Seal of United States Circuit Court.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Return of United States District Judge.

The Clerk of the United States District Court is hereby directed to deliver to the Judges of the United States Circuit Court within and for the Eastern District of Virginia the record and proceedings mentioned in the within writ.

EDMUND WADDILL, JR.,
U. S. District Judge.

Richmond, Va., July 14", 1906.

86 *Complaint.*

Filed July 14th, 1906.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

On this 14th day of July, A. D. 1906, at the City of Richmond, in the said District, before the Hon. Edmund Waddill, Jr., Judge of the District Court of the United States of America for the said

District, comes Morgan Treat, United States Marshal in and for the said District, and upon his oath complains and says: that he has good cause to believe and does firmly believe that Samuel T. Morgan of Richmond, Virginia, stands indicted by the Grand Jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said Samuel T. Morgan on the eighth day of July in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, being during said period President of the Virginia-Carolina Chemical Company, a corporation existing under and by the laws of the State of New Jersey, did in the said Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said Samuel T. Morgan did unlawfully conspire with divers other persons and
87 corporations to commit an offense against the United States, to-wit, the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States, all as more fully set out in an indictment filed in the said Circuit Court of the United States in and for the Middle District of Tennessee on May 25, 1906, in cause No. 963, entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," a certified copy of which indictment is hereto attached and made a part of this complaint; and complainant therefore charges that the said Samuel T. Morgan did commit the said offense against the United States in manner and form as set forth in said indictment.

Complainant furthermore avers upon information and belief that in pursuance of an order of said Circuit Court of the United States for the Middle District of Tennessee a bench warrant has been issued from said Court for the arrest of said Samuel T. Morgan and delivered to the Marshal of said Court, who after due search has returned said warrant "not found" in said Middle District of Tennessee; and that said Samuel T. Morgan is now believed to be within the Eastern District of Virginia, of which District he is a resident.

Wherefore this complainant prays that the said Samuel T. Morgan may be arrested and imprisoned and removed or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee, and further dealt with according to law.

MORGAN TREAT, *Marshal.*

Subscribed and sworn to before me by the above named Morgan Treat the day and year first above written.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

88 *Certified Copy of Indictment.*

In the Circuit Court of the United States of America for the Middle District of Tennessee, of the April Term, in the Year of Our Lord Nineteen Hundred and Six.

MIDDLE DISTRICT OF TENNESSEE, *sct:*

The grand jurors for the United States of America, inquiring for the Middle District of Tennessee, upon their oath present, that before and on the eighth day of July, in the year of our Lord nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year of our Lord nineteen hundred and five, the following named corporations, respectively organized and existing under and authorized by the laws of the several States and of the foreign country here named in connection with them, and hereafter in this indictment called corporation defendants, to wit, the Virginia-Carolina Chemical Company, of New Jersey, Armour and Company, of Illinois, the Acme Manufacturing Company, of North Carolina, the Alabama Chemical Company, of New Jersey, the Anderson Phosphate & Oil Company, of South Carolina, the Ashepoo Fertilizer Company, of South Carolina, the Blackshear Manufacturing Company, of Georgia, the Etiwan Fertilizer Company, of South Carolina, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, The Furman Farm Improvement Company, of Georgia, the Goulding Fertilizer Company, Limited, of Great Britain and Ireland, The Goulding Fertilizer Company, of Florida, the Gulfport Cotton Oil, Fertilizer & Manufacturing Company, of Georgia, the Home Mixture Guano Company, of Georgia, the Jackson Fertilizer Company, of Mississippi, the Marietta Fertilizer Company, of Georgia, the Meridian Fertilizer Factory, of Mississippi, the National Fertilizer Company, of Tennessee, the New Orleans Acid and Fertilizer Company, of New Jersey, the Old Dominion Guano Company, of Georgia, the Planters Chemical Company, of Alabama, the Read Phosphate Com-
89 pany, of West Virginia, the F. S. Royster Guano Company, of Virginia, the Savannah Guano Company, of Georgia, the Southern States Phosphate and Fertilizer Company, of Georgia, the Standard Chemical & Oil Company, of Alabama, the Standard Guano and Chemical Manufacturing Company, of Louisiana, Swift & Company, of Illinois, the Tennessee Chemical Company, of Tennessee, and the Tennessee Valley Fertilizer Company, of Alabama, and certain firms, to wit, the firm of A. D. Adair and McCarty Brothers and the firm of Wilcox, Ives & Company, did carry on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereafter in this indictment called the States of the conspiracy, as wholesale dealers in complete and alkaline fertilizers and in acid phosphates, nitrates, and potash salts suitable for fertilizers, which then were useful and valuable articles of merchandise, indispensable for use on the soil of the said States of the conspiracy in order that the staple

crops of those States might be raised therefrom; that the following named persons, hereafter in this indictment called individual defendants, to wit, Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, of the said Virginia-Carolina Chemical Company, and J. Rice Smith, agent and manager of the said Virginia-Carolina Chemical Company, and president of the Georgia Chemical Works hereinafter mentioned, Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, Fred G. Brown, president and treasurer of the said Anderson Phosphate & Oil Company, Frank Burbidge, president, and William J. McCormack, treasurer of the said Etiwan Fertilizer Company, George Braden, president of the said Federal Chemical Company, of Delaware, and also of the said Federal Chemical Company, of Kentucky, Augustus D. Adair and James D. McCarty, officers and agents of the said Furman Farm Improvement Company and members of the said firm of A. D. Adair and McCarty Brothers, William DeC. Kessler, secretary and treasurer of the said Goulding Fertilizer Company, Limited, James G. Tinsley, president of the said Marietta Fertilizer Company and vice-president of the said Tennessee Chemical Company, William D. Rhea, general manager of the said National Fertilizer Company, William L. Peel, president of the said Old Dominion Guano Company, Abram C. Read, vice-president and general manager, and Isaac Mayo Read, agent, of the said Read Phosphate Company, Frank S. Royster, president, and Charles F. Burroughs, vice-
90 president, of the said F. S. Royster Guano Company, A. J. Ives, whose Christian name is to the said grand jurors unknown, secretary and treasurer of the said Savannah Guano Company and a member of the said firm of Wilcox, Ives & Company, T. Porter Fleming, vice-president of the said Southern States Phosphate and Fertilizer Company, and T. Garland Tinsley, president and treasurer of the said Tennessee Chemical Company, in their said several capacities as officers, managers, agents, and attorneys of the said corporation defendants and members of the said firms, and on behalf of those corporations and firms, during the period of time in this indictment first aforesaid, did carry on the business aforesaid; that in so carrying on the said business the said defendants, that is to say, the said corporation and individual defendants, did sell and deliver large quantities of the said merchandise within the limits of the said States of the conspiracy from the respective places of business of the said corporation defendants and the said firms, located at different points within those States, to retail dealers in and consumers of such merchandise, in such States respectively, and did also ship large quan-ties of the same from their respective places of business, located in the said States of the conspiracy and also in the States of Virginia, Illinois, and Kentucky, into and through other of the said States than those in which their said places of business were located; that in so carrying on the said business and shipping the said merchandise from one of the said States into and through another or others thereof, the said defendants, during the period

aforesaid, were engaged in trade and commerce among the States of this Union within the meaning of the Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in so carrying on the said business, trade and commerce, the said Virginia-Carolina Chemical Company and the said Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, and J. Rice Smith, agent and manager, of the said Virginia-Carolina Chemical Company, did make use of and operate a portion of their said business, trade and commerce through each of certain other corporations, to wit, the American Fertilizing Company, of Virginia, the Birmingham Fertilizer Company, of Alabama, the Coweta Fertilizer Company of Georgia, the Georgia Chemical Works, of Georgia, the Navassa Guano Company, of North Carolina, of either the whole or a majority of the capital stock of which said corporations respect-
91 ively the said Virginia-Carolina Chemical Company was the owner; that in so carrying on the said business, trade and commerce, the said Armour and Company and the said Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, did make use of and operate all of their said business, trade and commerce through a certain other corporation called the Tuscarora Fertilizer Company, of New Jersey, and a certain trade name, to wit, the trade name of Armour Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Furman Farm Improvement Company and the said firm of A. D. Adair and McCarty Brothers did make use of and operate a portion of their said business trade, and commerce under the trade name of Chickamauga Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Federal Chemical Company, of Delaware, and the said Federal Chemical Company of Kentucky, did make use of, and operate a portion of their said business, trade and commerce through, the names of Century Phosphate Company, Fox Chemical Company, Branch, Globe Fertilizer Company, Branch, and Tennessee Phosphate Company; that in so carrying on the said business, trade and commerce, the said National Fertilizer Company did make use of, and operate a portion of its said business, trade and commerce through, the corporate name of American Guano Company and the trade name of Nashville Guano Company; that in so carrying on the said business, trade and commerce, the said Read Phosphate Company did make use of, and operate a portion of its said business, trade and commerce through the corporate name of Empire Guano Company; that in so carrying on the said business, trade and commerce, the said F. S. Royster Guano Company did make use of, and operate a portion of its said business, trade and commerce through the trade name of Atlantic Chemical Company and the corporate name of Columbia Guano Company; that in so carrying on the said business, trade and commerce, the said Swift and Company did make

use of, and operate the whole of its said business, trade and commerce through, the trade name of Swift Fertilizer Works; and that in so carrying on the said business, trade and commerce, the said Tennessee Chemical Company did make use of, and operate a portion of its said business, trade and commerce through, the trade name of Continental Fertilizer Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that of the total volume of such business, trade and commerce then so being carried on by the said defendants and their competitors, the said defendants together had and controlled
92 the principal part, that is to say, ninety per centum thereof; and that because the said corporation defendants and the said firms were in fact separate and distinct from each other, they should have conducted their interstate trade and commerce strictly in competition with each other, during the said period, and then would have so conducted the same but for the unlawful conspiracy in restraint of the said business, trade and commerce in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, at and within the said Middle District of Tennessee, in violation of the provisions of said section one of the said Act of Congress, unlawfully did knowingly engage in a conspiracy in restraint of the said business, trade and commerce, so then being carried on by them in the manner aforesaid, whereby the said business, trade and commerce was restrained in the several ways and by the several means now here set forth and described, that is to say:

Competition as to the prices at which the said merchandise was sold and delivered by the said corporation defendants and the said firms in the said States of the conspiracy, which before the period of time in this indictment first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was prevented and destroyed by the said defendant from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them styled "current, reasonable market prices," for the said merchandise so sold and delivered by the said corporation defendants and the said firms in those States, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so fixed and caused to be fixed; which said uniform and non-competitive prices were prices greatly in excess of the prices which but for the said unlawful conspiracy would at such times have prevailed for the said merchandise in the said business, trade and commerce, and were prices therefore unreasonable, and were a tax on the people of the said States of the said conspiracy amounting to a large sum of money, to wit, four million dollars, annually during the continuance of the same.

For and on account of such quantity of the said merchandise as was sold and delivered as aforesaid by any of such corporation de-

fendants or of such firms, in excess of amounts allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and de-
93 livered in excess, was, by the corporation defendants and firms so selling and delivering the same, paid into a common fund, held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, compensated, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as sold and delivered less than the amounts so allotted to them respectively, so it was not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy that each of the said corporation defendants and of the said firms also paid into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be the absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm, in disposing of its said allotment in carrying on the said business, trade and commerce, on its part faithfully should exercise every reasonable effort and due business diligence to maintain the prices so fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its said excess sales, in which case an equal amount was returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also made uniform and non-competitive as between all of the said corporation defendants and the said firms, in the said business, trade and commerce, among the said States of the conspiracy.

As a convenient intermediary and common agent between the said corporation defendants and the said firms, respectively and as a means of securing their co-operation in carrying out the said unlawful conspiracy, the said defendants made use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company, Limited, was also allowed and required to collect, hold, use and distribute the said fund aris-
94 ing from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of September, in the year nineteen hundred and three, during the period of time aforesaid, at and within the City of New York, in the State of New York, unlawfully did knowingly, deposit with the Continental Trust Company, of the said City of New York, the sum of twenty-six thousand dollars, in connection with the purchase of by the said trust company on behalf of the said Virginia-Carolina Chemical Company, and in the name of one Montrose Stuart, a clerk in the office of the said trust company, of twenty-six hundred shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Samuel T. Morgan, on the seventh day of October, in the same year nineteen hundred and three, and during the period of time aforesaid, at and within the said city of New York, in the State of New York, unlawfully did deliver to the said William DeC. Kessler, Vice-President of the said Colonial Development Company, Limited, three checks drawn by the said Virginia-Carolina Chemical Company, one upon the National City Bank, of New York City aforesaid, for eighty thousand dollars, another on the Bank of America, of New York City aforesaid, for fifty thousand dollars, and the other on the National Park Bank, of New York City aforesaid, for thirty-five thousand and four hundred and sixty-eight dollars, aggregating one hundred and sixty-five thousand and four hundred and sixty-eight dollars, as and for a payment, by the said Virginia-Carolina Chemical Company, to the said Colonial Development Company, Limited, of twenty cents a ton on its allotment under the said unlawful conspiracy; he the said Samuel T. Morgan, when and where he so as aforesaid delivered the said checks to the said William DeC. Kessler, well knowing the character and purpose of the same, and well knowing that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as acts on their parts respectively of engaging in the same, the said Samuel T. Morgan,
Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox,
95 J. Rice Smith, Austin B. Carpenter, Charles G. Wilson,
Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, on the seventeenth day of September, in the year nineteen hundred and three, and during the period aforesaid, at the said City of New York, in the said State of New York, unlawfully did meet together to discuss and further the object of the said unlawful conspiracy; they the said Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy,

Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, when and where they so as aforesaid met together, each well knowing the character and purpose of the said meeting, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank E. Wilcox, on the first day of November, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did deliver to one W. W. Perkins, Secretary of the said American Fertilizing Company, a certain document, too voluminous to be here set forth, stating certain prices and terms of sale, fixed in pursuance of the said unlawful conspiracy, for the said fertilizer merchandise, in the States of North Carolina, South Carolina, Georgia, Florida, Alabama and Tennessee, for the spring season of the year nineteen hundred and four; he the said Frank E. Wilcox at the time and place when and where he so as aforesaid delivered the said document to the said W. W. Perkins, well knowing the character of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, and during the period of time aforesaid, at the town of Decherd, in the said Middle District of Tennessee, by and through one
96 F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, and during the period aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to

furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, and during the period of time aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at the City of Nashville, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, a certain notice of shipment, partly written and partly printed, in the words and figures following, that is to say:

"The Armour Fertilizer Works
Owned and operated by
Armour & Company.

Prudential Building,
Atlanta, Ga.

Duplicate.
To be Mailed with Bill of
Lading to Customer.

No. 612
March 10", 1905.

97 We have this day shipped from Nashville, Tenn. storage
To Bramlitt Hdw Co.
Corinth, Miss.
Charge to S. D. Bramlitt. Address same.

No. Bags.	Weight of bags.	Brand	Tons.
400	100	King Cotton 8.2.2	20

Order No. 4613.
Bill of lading herewith. Invoice will be mailed from Chicago.
Above quantities shipped 3 10 1905. Freight Terms.....
Car No. 13619. Via L. & N.
Charges prepaid $48.00.

THE ARMOUR FERTILIZER WORKS,
Per ALEX. LESLIE."

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the

said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Austin B. Carpenter, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Assistant Secretary of the said Colonial Development Company, unlawfully did sign his name, to wit, "A. B. Carpenter, Ass't Sec'y" on the face of a certain stock certificate, to wit, certificate No. 28, showing the ownership by one Thomas M. Green of fifty-one shares of the capital stock of the said Colonial Development Company; he the said Austin B. Carpenter, at the time and
98 place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his said act to be done in pursuance and to effect the object of the said conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles H. MacDowell, on the twelfth day of January, in the year nineteen hundred and five, and during the period of time aforesaid, at and within the city of Chicago, in the State of Illinois, unlawfully did sign his name, to-wit, "C. H. MacDowell," under the name of the Armour Fertilizer Works, and after the word "by" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Armour and Company, under the trade name of "Armour Fertilizer Works," offered to furnish and deliver at Corinth, in the State of Mississippi to one S. D. Bramlitt, twenty tons of the fertilizer merchandise aforesaid; he the said Charles H. MacDowell, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Acme Manufacturing Company, on the first day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the city of Wil-

mington, in the State of North Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of six hundred and twenty dollars for sixty-two shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Alabama Chemical Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Montgomery, in the State of Alabama, unlawfully did knowingly deliver its certain check drawn upon the Merchants and Planters-Farley National Bank, Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of William DeC. Kessler, as payment for forty-two shares of the capital stock of the said Colonial Development Company, Limited;

99 And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Anderson Phosphate and Oil Company, on the twenty-ninth day of August, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Anderson, in the State of South Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of five hundred and eighty dollars for fifty-eight shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly buy from the Carolina Savings Bank, Charleston, South Carolina, a draft upon the Citizens National Bank, of New York City, for the payment of the sum of seven thousand nine hundred and forty-nine dollars and forty-three cents to the order of one Frank E. Taylor, Vice-President and General Manager of the said Ashepoo Fertilizer Company;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and *and* during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly cause the said Frank E. Taylor to endorse the check last above mentioned payable to the order of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Blackshear Manufacturing Company, on the seventeenth day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Blackshear, in the State of Georgia, unlawfully did know-

ingly deliver to the Atlantic Coast Line Railroad Company six tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of E. J. Blume & Company, at Live Oak, in the State of Florida;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Etiwan Fertilizer Company, on the fourteenth day of December, in the year nineteen hundred
100 and three, and during the period of time aforesaid, at and within the town of Cairo, in the State of Georgia, by and through one P. H. Seabrook, its agent, unlawfully did knowingly offer and agree to furnish and deliver to the firm of Wight Brothers, of Cairo aforesaid, thirty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank Burbidge, on the first day of July, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Charleston, in the State of South Carolina, having then and there in his hands a certain check, dated the thirtieth day of June, in the same year nineteen hundred and four, drawn by the said Alabama Chemical Company upon the Continental National Bank of Chicago, for the payment of eleven hundred and forty-two dollars and ninety-seven cents to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Pay to order of People's National Bank, Colonial Development Co., Ltd., F. Burbidge, Pres."; he the said Frank Burbidge then and there, to wit, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William J. McCormack, on the ninth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, having then and there in his hands a certain check dated the fifth day of September, in the same year, drawn by the said New Orleans Acid & Fertilizer Company, upon the Louisiana National Bank of New Orleans, for the payment of seven hundred and fifty dollars to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Colonial Developm't Co., Frank Burbidge, Sec. & Treas., per Wm. J. McCormack"; he the said William J. McCormack, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy,

and to effect the object of the same, and as an act on its part of engaging in the same, the said Federal Chemical Company, of
101 Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the said State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, and during the period of time aforesaid, at Springfield afore-
102 said, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff & Williams, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Goulding Fertilizer Company, Limited, on the twenty-fifth day of November, in the year nineteen

hundred and three, and during the period of time aforesaid, at and within the town of Cullman, in the State of Alabama, by and through one W. E. Craig, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one John Sutterer, at Cullman aforesaid, three hundred and seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the sixth day of September, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Pensacola, in the State of Florida, having then and there in his hands a certain check, dated the fifth day of September, in the same year nineteen hundred and three, drawn by the said Alabama Chemical Company upon Merchandise Merchants and Planters-Farley National Bank of Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of W. DeC. Kessler, unlawfully did sign his name, to wit, "W. DeC. Kessler," upon the back of the said check next below the written words "Pay to the order of Colonial Development Co."; he the said William DeC. Kessler then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the back of the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the said fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Vice-President of the said Colonial Development Company, unlawfully did sign his name, to wit, "W. DeC. Kessler, V. P." on the face of the said stock certificate in the name of Thomas M. Green; he the said William DeC. Kessler, at the time and place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his act to be done in pursuance and to effect the object
103 of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Gulfport Cotton Oil Fertilizer and Manufacturing Company, on the twenty-seventh day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-four hundred dollars for and in respect of twelve thousand tons of the fertilizer merchandise aforesaid, allotted to the said Gulfport Cotton Oil, Fertilizer and Manufacturing Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy,

and to effect the object of the same, and as an act on its part of engaging in the same, the said Home Mixture Guano Company, on a day in the year nineteen hundred and three to the said grand jurors unknown, and during the period of time aforesaid, at and within the City of Columbus, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Jackson Fertilizer Company, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Jackson, in the State of Mississippi, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Marietta Fertilizer Company, on the twenty-first day of July, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by and through one L. W. Reeves, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one James A. Boyd, at Jonesboro aforesaid, seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said James G. Tinsley, on the third
104 day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Nashville, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley; he the said James G. Tinsley, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Meridian Fertilizer Factory, on the seventh day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Cullman, in the State of Alabama, by its agent E. L. Robbins, un-

lawfully did knowingly offer to furnish to C. A. Steifelmeyer one hundred and fifty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge; he the said
105 William D. Rhea, then and there, to wit, at the time and place when and where he so directed and required the said E. W. Connell to sign his name as aforesaid to the said check, well knowing the nature and contents of the said check, and that his said direction and requirement were in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid; he the said William D. Rhea then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the said document, well knowing the character of the same, and well knowing his said act to be one done in pursuance of and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said New Orleans Acid & Fertilizer Company, on

the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars for seventy-five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Old Dominion Guano Company, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-six hundred and twenty dollars, for and in respect of
106 thirteen thousand one hundred tons of the fertilizer merchandise aforesaid, allotted to the said Old Dominion Guano Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William L. Peel, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did sign his name, to wit, "W. L. Peel, Prest.," to a certain check, to wit, a check drawn by the Maddox-Rucker Banking Company upon the National Park Bank, New York, for the payment of twenty-six hundred and twenty dollars to the order of the said Colonial Development Company, Limited; he the said William L. Peel, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Planters Chemical Company, on the thirtieth day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Talladega, in the State of Alabama, unlawfully did knowingly pay the said Colonial Development Company, Limited, the sum of fifty dollars for five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Read Phosphate Company, on the fifth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Hartselle, in the State of Alabama, unlawfully did knowingly offer to sell and deliver to one S. E. Stewart, at that place, forty to fifty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of en-

gaging in the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here
107 set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid; he the said Abram C. Read, then and there, to wit, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved, Nashville, Tenn. Dec. 6, 1904," and above the word "Manager," upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof, offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid; he the said Abram C. Read then and there, to wit, at the time and place when and where he so as aforesaid signed his name to the last mentioned document, well knowing the character and contents of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said F. S. Royster Guano Company, on the thirtieth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine thousand three hundred and fourteen dollars and seventy-four cents, on account of such merchandise sold and delivered by the said F. S. Royster Guano Company in excess of its allotment under the aforesaid unlawful conspiracy;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles F. Burroughs, on the
108 twenty-fifth day of March, in the year nineteen hundred and four, and during the period of time aforesaid, at and within

the City of Norfolk, in the State of Virginia, unlawfully did sign his name, to wit, "C. F. Burroughs," under the word "countersigned" and above the words "Vice-President" upon the face of a certain document, partly written and partly printed, too voluminous to be here set forth in full, wherein and whereby the said F. S. Royster Guano Company and he the said Charles F. Burroughs, as Vice-President thereof, offered to sell to one J. W. Carter, and to deliver to him at Maxton, in the State of North Carolina, ten tons of the fertilizer merchandise aforesaid; he the said Charles F. Burroughs, at the time and place when and where he so as aforesaid signed his name to the said document, well knowing the character and contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Savannah Guano Company, on the second day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did knowingly pay to the said Frank Burbidge the sum of nine hundred and forty dollars for ninety-four shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said A. J. Ives, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did sign his name, to wit, "A. J. Ives, Secty. & Treas." to a certain check, to wit, a check drawn by the Savannah Guano Company upon the Merchants National Bank, Savannah, Georgia, for the payment of three thousand one hundred and forty dollars to the order of New York Exchange; he the said A. J. Ives, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further n pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Southern States Phosphate and Fertilizer Company, on the fifth day of September, in the year nineteen
109 hundred and three, and during the period of the time aforesaid, at and within the City of Augusta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine hundred and sixty dollars for ninety-six shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Chemical and Oil Company, on the third day of October, in the year nineteen hundred and three,

and during the period of time aforesaid, at and within the Town of Troy, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand dollars for and in respect of one-half of forty thousand tons of the fertilizer merchandise aforesaid allotted to the said Standard Chemical and Oil Company, as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Guano and Chemical Manufacturing Company, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand seven hundred and seventy-four dollars and seventy-seven cents as a partial payment for and in respect of the fertilizer merchandise aforesaid, allotted to the said Standard Guano and Chemical Manufacturing Company, as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Swift & Company, on the first day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by its agent, J. Z. Elliott, unlawfully did knowingly offer to furnish to one W. P. Diehl thirty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

And that, further in pursuance of the said unlawful con-
110 spiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes & Bro., at Oxford, Alabama, a certain letter of the tenor following, to wit:

T. G. Tinsley, Pres't & Treas. Allen Hardison, Sec'y.

Tennessee Chemical Company, Manufacturers and Importers of Ox Fertilizers.

NASHVILLE, TENNESSEE, *May* 17, '05.

Messrs. D. P. Haynes & Bro., Oxford, Ala.

DEAR SIRS:—I am in receipt of your favor of the 16th and beg to state we could not allow any discount further than the 5% for cash settlement. We will be glad to have you settle in cash on this basis if you desire to do so, but are sorry to state we are not in a position to offer you any further discount.

Yours truly, T. G. TINSLEY, *President;*

he the said T. Garland Tinsley then and there, to wit, at the time and place when and where he so as aforesaid caused the said letter to be written and sent as aforesaid, well knowing that the same was so written and sent in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part in engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Company, James G. Tinsley. By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon the Mercantile National Bank, New York, for the payment of
111 sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley; he the said T. Garland Tinsley, at the same time and place when and where he so as aforesaid wrote the said endorsement on the back of the said check, well knowing the contents of the same, and that his said act was done in pursuance of and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Valley Fertilizer Company, on the second day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Florence, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars, as a partial payment for and in respect of fertilizer merchandise aforesaid, allotted to the said Tennessee Valley Fertilizer Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on their parts respectively, of engaging in the same, the said Frank Burbidge,

Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson, during the period of time aforesaid, at the City of New York, in the State of New York, the City of Washington, in the District of Columbia, Old Point Comfort and Hot Springs, in the State of Virginia, St. Augustine, in the State of Florida, and French Lick Springs, in the State of Indiana, unlawfully did as officers, directors and attorney of the said Colonial Development Company, Limited, meet together for the purpose of discussing and attending to the affairs of the said Colonial Development Company, Limited; they the said Frank Burbidge, Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson when and where they so met together aforesaid, well knowing the purpose of such meetings, and well knowing their acts in the premises to be acts in pursuance and to effect the object of the said unlawful conspiracy, and that the same were done as acts on their parts respectively of engaging in the said unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, during the period of time aforesaid, and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form aforesaid, unlawfully did engage in a conspiracy in restraint of trade and commerce among the several States; Against the
112 peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

SECOND COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the first count described, and were so engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord, nineteen hundred and three at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the grand jurors unknown, and engage in a conspidacy, among themselves and with such other

unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid; which said unlawful conspiracy in this count mentioned then and there was a conspiracy for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described; that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing and causing to be fixed, uniform and non-competitive prices, by them to be styled "current, reason-
113 able market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such times prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum ther-of during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be the

absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on the said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its excess sales, in which case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of pay-
114 ment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their co-operation in carrying out the said unlawful conspiracy, the said defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, and as being acts on the part of the said corporation and individual defendants respectively of engaging in that conspiracy, are now here in this count charged to be acts by the same corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned, and to have been acts on the part of the said corporation and individual defendants respectively of engaging in the last-named unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the

said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of trade and commerce among the several States;
115 against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

THIRD COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the said first count described, and so were engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the said United States, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the said United States, to wit, the offense of engaging in a combination, among themselves and with such other unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid, which said unlawful conspiracy in this count mentioned then and there was a conspiracy to engage in a combination for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and com-
116 merce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them to be styled "current,

reasonable market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such time prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful combination and ninety per centum thereof during the second year; it being a further element of the said unlawful combination in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be — absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on the said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its excess sales, in which
117 case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their cooperation in carrying out the said unlawful combination, the said

defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful combination; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, are now here in this count charged to be acts by the said corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a con-
118 spiracy to commit an offense against the said United States;
Against the peace and dignity of the said *said* United States; *Against the peace and dignity of the said United States*, and contrary to the form of the statute in such case made and provided.

FOURTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in

connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State, but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchan-
119 dise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the aforesaid business and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section one of the said Act of Congress, approved July 2, 1890, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Ala-

bama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company,
120 and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly engage in a conspiracy in restraint of commerce among the several States, to wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, whereby the said commerce was restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise which were maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the period of such unlawful conspiracy, and greatly in excess of those prices which would have otherwise prevailed in the said States during the period of such unlawful conspiracy, and were therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby earnest money was given to secure the maintenance of such prices and compensation was made to those losing volume of business by reason of maintaining such prices, that is to say:

There was from time to time allotted to each of said corporation

defendants and firms an amount of tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporations defendants and firms paid into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sums becoming due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which faithfully maintained such uniform and non-competitive prices and failed to make sales
121 and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but sold and delivered through itself and its subsidiary companies a minimum amount thereof required as a guarantee of good faith, received from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid fell short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies made such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, as a penalty upon such excess sales, paid into such common fund like amounts per ton on the said respective kinds of fertilizers, divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means whereby said unlawful conspiracy was effected, a corporation of Ontario, Canada, whose stock was apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was the common fund aforesaid into which was paid the earnest money and penalties on excess sales aforesaid, and from which was paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which the same was operated and directed.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that within the period aforesaid of said unlawful conspiracy in this count of this indictment mentioned, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and did do and perform such acts as acts on their respective parts of engaging in the said unlawful conspiracy in this count of this indictment mentioned, and that each of such defendants at the time and place when

and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant- respectively, then and there well knew the character of such act and that such
122 act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, and as an act on the part of such defendant in engaging in the same, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year, nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the
123 tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to

Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chatta-
124 nooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit,
125 "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawul conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec. 6, 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abraham C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P.
126 Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said corporation and individual defendants, during the period of time aforesaid, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

FIFTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen

hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the
127 other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so

carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, approved July 2, 1890, the said corporation de-
128 fendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, and engage in a conspiracy among themselves and with such other unknown corporations and persons, in restraint of commerce among the several States, to-wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid by which unlawful conspiracy said commerce was to be restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the

various points of delivery in the said States of the conspiracy,
129 which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy, and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices, that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to make sales and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales as aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose
130 treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary

and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful conspiracy was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that such act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the ewenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

131 In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Dercherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one

Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesand, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company,
132 on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of

Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District
133 of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his, the said E. W. Connell's name as such Treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fer-

tilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tenneess, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn., Dec. 6 1904" and
134 above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for

the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

135 SIXTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United

States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An
136 Act to protect trade and commerce against unlawful restraints and monopolies"; that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorneys of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and in the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section 5440 of the Revised Statutes of the United States, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack,
137 George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Roys-

ter, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the United States, to wit, to engage in a combination in restraint of commerce among the several States, namely, a combination in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, and did then and there so conspire to commit the aforesaid offense by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy; and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices; that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to
138 make sales and deliveries of such merchandise through itself and its subsidiary — amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation

defendants and firms which, through itself and its subsidiary companies, should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful combination was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that

139 such act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the

object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at
140 West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and

within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchan-
141 dise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Arndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee,

unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Man-
142 ager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec 6 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect t object of the same, the said Tennessee Chemical Company, on t sixteenth day of March, in the year nineteen hundred and five, and within West Nashville, in the said Middle District of Tennesse, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid. in the said Middle District of Tennessee,

unlawfully did cause to be written and sent by mail to "D. P. Haynes and Bro.," at Oxford, Alabama, that certain letter of the date
143 set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley, By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did conspire to commit an offense against the United States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

ABRAM M. TILLMAN,
United States Attorney.

(Endorsed as follows:) No. 963. United States Circuit Court, Middle District of Tennessee. *The United States vs. Virginia-Carolina Chemical Company et als.*

Indictment for violating Act of Congress approved July 2, 1890, and entitled "An Act to Protect Trade and Commerce against unlawful restraints and monopolies," and Section 5440 R. S. U. S.

A True Bill. Robert Q. Stewart, Foreman of the Grand Jury.

Names of Witnesses Sworn and Examined Before the Grand Jury.

J. C. Adams, Henry E. Ahern, Lee Ashcraft, Eugene Atkinson, N. E. Barker, W. F. Barrett, James C. Beck, J. M. Berry, W. W. Bird, L. W. Botts, Clarence Braden, S. D. Bramlitt, A. P. Brantley, B. D. Brantley, Dewitt Brown, H. C. Brown, Arthur Bussey,
144 Hezekiah Bussey, E. J. Blume, James A. Boyd, William F. Burns, Oscar Bright, J. W. Carter, B. G. Clark, C. W. Comes, E. W. Connell, Charles Earle Currie, R. L. Davis, Joseph Denee, W. P. Diehl, A. M. Dobbs, John V. Dobson, C. H. Drayton, W. L. Dumas, J. B. Duncan, S. Eastland, T. B. Edwards, Culpepper Exum, H. C. Fischer, J. B. Fiser, Albert French, C. A. Gambrill, A. H. George, John E. Gibbs, William Gilchrist, James M. Goldsmith, A. A. Green, E. P. Grice, W. A. Hansell, G. A. Harrington, H. J. Harby, Allen Hardison, L. C. Hayne, J. L. Haynes, D. P. Haynes, R. W. Henderson, P. W. Hendricks, E. R. Hodgson, junior, E. R.

Hodgson, senior, J. L. Horn, W. E. Hudson, T. J. Hunt, R. H. Johnston, T. V. Kessler, E. M. Kirk, Henry Kirn, H. L. Law, Alexander Leslie, J. A. Lindsey, W. Hampton Logan, Harry Luck, John A. Lewis, W. F. McKenzie, Robert F. Maddox, H. W. Malloy, E. R. Manning, H. L. Milligan, J. Allen Moore, M. B. Neece, W. J. Oliver, E. Thomas Orgain, D. B. Osborne, Every M. Paget, W. W. Perkins, Dr. J. D. Plunkett, F. B. Pope, William Price, Charles Rainey, Frederick Rayfield, Isaac W. Read, W. A. Reynolds, I. T. Rhea, W. E. Richards, H. A. Rogers, V. N. Roadstrum, W. G. Sadler, G. W. Sanders, E. M. Sentelle, W. McR. Smith, R. G. Sparrow, J. F. Stackley, C. A. Steifelmeyer, S. E. Stewart, W. B. Stratford, John Sutterer, E. R. Taber, Frank E. Taylor, W. B. Taylor, W. D. Tharin, J. R. Timmerman, J. W. Todd, S. W. Travers, George H. Tucker, E. Van Winkle, J. T. Welch, O. C. Wiley, C. H. Willcox, T. B. Williams, Benjamin L. Willingham, W. S. Wight, E. G. Woodling.

Filed 11:30 A. M., May 25, 1906. H. M. Doak, Clerk, by E. L. Doak, Deputy Clerk. Abram M. Tillman, U. S. Atty.

I, H. M. Doak, Clerk of the Circuit Court of the United States in and for the Middle District of Tennessee, hereby certify that the foregoing is a true, perfect, and complete copy of an indictment filed as thereupon endorsed, etc. In witness whereof I have hereunto signed my name and affixed the seal of said court, at my office, this the 26th day of May, 1906.

[SEAL OF COURT.] H. M. DOAK, *Clerk*.

145 *Warrant.*

UNITED STATES OF AMERICA, *Eastern District of Virginia, set:*

To the Marshal of the Eastern District of Virginia, Greeting:

Whereas complaint in writing, on oath, has been made to me charging that Samuel T. Morgan of Richmond, Virginia stands indicted by the grand jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said Samuel T. Morgan on the eighth day of July, in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, did in the Middle District of Tennessee unlawfully engage in a conspiracy in restrain of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said Samuel T. Morgan did unlawfully conspire with divers other persons and corporations to commit an offense against the United States, to-wit, the offense of

engaging in a combination in restraint of trade and commerce among the several States of the United States; and application has been made to me that the said Samuel T. Morgan may be arrested and imprisoned and removed or bailed, as the case may be, for trial befor the said Circuit Court of the United States for the Middle District of Tennessee;

146 Now therefore, you are hereby commanded to arrest the said Samuel T. Morgan if he be found within your said Distric, and bring him forthwith before me at my Chambers in Richmond, in order that he may be dealt with according to law.

Richmond, Va., July 14", 1906.

EDMUND WADDILL, JR.,
U. S. District Judge.

Marshal's Return.

Pursuant to the within writ, I have taken the defendant Samuel T. Morgan into custody and now have him before Hon. Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia.

July 14, 1906.

MORGAN TREAT,
United States Marshal.

Conclusions of the Court.

Filed July 14th, 1906.

THE UNITED STATES
vs.
SAMUEL T. MORGAN.

The conclusion reached by the Court is that in a proceeding for the arrest and removal of persons charged with a violation of the laws of the United States pursuant to section 1014 of the

147 Revised Statutes of the United States, before a United States District Judge sitting in the State of Virginia, in which State there no longer exists the right of a preliminary examination upon a criminal charge prior to the trial upon the merits, when such Judge is called upon to act as well in the matter of the apprehension of such persons, as in their removal to the jurisdiction in which they have been indicted, that upon the government's presentation of a sufficient indictment regularly found by a grand jury in a court of the United States, properly charging the commission of an offense within the district in which such indictment is found, coupled with proof of the identity of the person indicted, it is its duty to properly bail such person for appearance before the Court in which he is indicted, or cause him to be removed thereto.

Order Allowing Bail.

Filed July 14th, 1906.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The within named Samuel T. Morgan having been brought before me, and identified; and it appearing by a duly authenticated copy of an indictment that he stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al,*" for violation of section one of the act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United
148 States, it is ordered that the said Samuel T. Morgan give bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial before said Court under the said indictment, or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee, to be there dealt with according to law.

Richmond, Va., July 14", 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the
Eastern District of Virginia.

Warrant of Imprisonment and Removal.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The President of the United States to the United States Marshal of the Eastern District of Virginia, Greeting:

Whereas it has been made to appear that Samuel T. Morgan stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled: "The United States *vs.* Virginia-Carolina Chemical Company *et al,*" for violation of section one of the act of Congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States; and whereas the said Samuel T. Morgan having been brought before me, and identified; and a certified copy of said indictment furnishing probable cause to believe him to be guilty as therein charged, and whereas it was thereupon ordered by
149 me that said defendant give bail in the sum of five thousand dollars with one or more sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial under said indictment, or that in de-

fault thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee to be there dealt with according to law; and the said defendant having failed and refused to give bail as required, therefore:

You are hereby commanded in the name and by the authority of the said United States to imprison the said Samuel T. Morgan in accordance with law, and that with all convenient speed you remove him hence to the said Middle District of Tennessee and there surrender him to the Marshal of that District, there to be dealt with according to law.

Richmond, Va., July 14, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the
Eastern District of Virginia.

Marshal's Return on Foregoing Warrant.

Executed July 14, 1906 by taking the within named defendant Samuel T. Morgan into custody, but before the order of removal was executed, a writ of *Habeas Corpus* was issued by order of the Circuit Court of the United States for the Eastern District of Virginia, sitting at Richmond, Virginia, commanding me to produce the body of the said Samuel T. Morgan before the said United States Circuit Court in the City of Richmond, Virginia, forthwith, and in pursuance of said writ of *Habeas Corpus,* I took the said Samuel T. Morgan before the United States Circuit Court as aforesaid,
150 by which court said writ of *Habeas Corpus* was discharged and an appeal allowed to the said Samuel T. Morgan to the Supreme Court of the United States, pending which appeal the said Samuel T. Morgan was by order of said Circuit Court discharged from custody on bond conditioned for his appearance before said Circuit Court to abide such order as should be made by said Circuit Court upon return of the mandate of said Supreme Court of the United States upon determination of said appeal.

Richmond, Virginia, July 14, 1906.

MORGAN TREAT,
United States Marshal.

Statement of Proceedings and Order.

Filed July 14, 1906.

THE UNITED STATES OF AMERICA, *Eastern District of Virginia:*

THE UNITED STATES
vs.
SAMUEL T. MORGAN.

This is an application under the provisions of Section 1014 of the United States Revised Statutes for a warrant for the removal of

Saml. T. Morgan to the Middle District of Tennessee and comes before me as follows:—

The District Attorney for this District, together with Mr. E. T. Sanford, Counsel for the United States, presented to me a verified complaint of Morgan Treat, United States Marshal for this District, with the certified copy of an Indictment filed on May 25th, 1906, in the Circuit Court of The United States for the Middle District of Tennessee in the case of the United States *vs.*
151 Virginia-Carolina Chemical Company and other defendants, including among such defendants the said Samuel T. Morgan.

Said complaint and copy of said indictment are made parts of this order. Upon the exhibition of this Indictment and affidavit and the *ex parte* motion of the counsel for the United States I made an order for the arrest of said Samuel T. Morgan and his production before me.

This order was duly executed by the said Marshal, who arrested the said Samuel T. Morgan and brought him before me in Richmond on this 14th day of July, 1906, as shown by his return. When the accused was so brought before me it was moved by the counsel for the United States that inasmuch as the indictment charged offenses against the United States triable in the Circuit Court of said United States for the Middle District of Tennessee, and the identity of the defendant was admitted, that an order be forthwith made for the commitment of said Samuel T. Morgan for trial before said Circuit Court.

This motion was made upon the certified copy of the indictment without any further testimony, the identity of the party arrested and brought before me as the Samuel T. Morgan mentioned in the Indictment being admitted.

And thereupon the defendant Samuel T. Morgan offered himself as witness in his own behalf, and being about to be sworn, the United States, by its counsel, thereupon objected to the witness being sworn or to any testimony being given in rebuttal of the Indictment in these proceedings, on the ground that the identity of the defendant being admitted, inasmuch as the Indictment on its face charges offenses against the United States committed and triable in the jurisdiction in which the defendant stands indicted, no evidence is admissible here to impeach the indictment, and the order of commitment should be made without other proof.

The Defendant's counsel thereupon offered to prove by the defendant and other witnesses then and there present, that the Circuit Court for the Middle District of Tennessee had no jurisdic-
152 tion over the person of said defendant touching the offense charged in said indictment, in that defendant and said other witnesses would, if permitted, testify: That he was not on the 8th day of July, 1903, or during the period between the 8th day of July, 1903, and the 1st day of September, 1905, in the State of Tennessee, or in the Middle District of Tennessee, and that he has not been in said Middle District of Tennessee since June 1900; that he did not enter, assent to, join or engage in the conspiracies in the indictment mentioned, or any or either of them, within the Middle District of

Tennessee at the time mentioned therein, or at any other time; that he did not, within the period mentioned, or at any other time, within the Middle District of Tennessee, do any act or thing to promote or further the said conspiracies in the indictment mentioned or any of them or to effect the objects or purposes thereof, that he did not at any time or any place join, assent to, enter or engage in the conspiracies or any of them engaged in in the Middle District of Tennessee alleged or aver-ed in said indictment.

Nor has the defendant done, or performed, or been engaged in, or a party to the same, or any of them, in any other place or places, at any other times whatsoever.

Thereupon counsel for the Government renewed its objections as aforesaid. After hearing counsel on both sides, the Court announced its conclusions as follows:

"The conclusion reached by the Court is that in a proceeding for the arrest and removal of persons charged with a violation of
153 a law of the United States pursuant to section 1014 of the Revised Statutes of the United States, before a United States District Judge, sitting in the State of Virginia, in which State there no longer exists the right of a preliminary examination upon a crime charged prior to the trial upon the merits, when said Judge is called upon to act as well in the matter of the apprehension of such persons, as in their removal to the jurisdiction in which they have been indicted, that upon the government's presentation of a sufficient indictment regularly found by a grand jury in a court of the United States, properly charging the commission of an offense within the District in which such indictment is found, coupled with proof of the identity of the person indicted, it is its duty to properly bail such person for appearance before the court in which he is indicted, or cause him to be removed thereto."

Therefore, it was ordered that the testimony offered is inadmissible, and will not be received, and I therefore made the following order:

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The within named Samuel T. Morgan having been brought before me, and identified; and it appearing by a duly authenticated copy of an indictment that he stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al.,*" for violation of section one of the act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies"
154 and for violation of section 5440 of the Revised Statutes of the United States, it is ordered that the said Samuel T. Morgan give bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial before said Court under the said indictment; or that in default

thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee, to be there dealt with according to law.

Richmond, Va., July 14th, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

And after said order had been made and the defendant declined to give bond, the Counsel for the United States moved that the warrant do issue directed to the Marshal of this District for the imprisonment and removal of the said Samuel T. Morgan to the Middle District of Tennessee and his delivery to the custody of the United States Marshal of that district.

On such motion counsel for the said Samuel T. Morgan objected and again offered the said Samuel T. Morgan as witness, together with the other witnesses herebefore referred to, to establish the same matters and facts as hereinbefore stated with regard to the objection to the order for the commitment of the said Samuel T. Morgan, which testimony was again offered and was again objected to by the counsel for the United States on the same grounds above set forth, and on the further ground that these matters could not now be inquired of in this stage of the proceedings, and was again excluded by the Court, to all of which counsel for the said Samuel T. Morgan duly excepted and had the exceptions noted and entered.

I therefore issued a warrant directed to the Marshal as follows:

Richmond, Va., July 14, 1906.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

155 *Warrant of Imprisonment and Removal.*

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The President of the United States to the United States Marshal of the Eastern District of Virginia, Greeting:

Whereas it has been made to appear that Samuel T. Morgan stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said court entitled: "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," for violation of section one of the act of Congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States; and whereas the said Samuel T. Morgan having been brought before me, and identified; and a certified copy of said indictment furnishing probable cause to believe him to be guilty as therein charged, and whereas it was thereupon ordered by me that said defendant give bail in the sum of five thousand dollars with one or more sureties for his appearance before the said Circuit Court of the United States States for the Middle District of Tennessee for trial under said indictment, or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Ten-

nessee to be there dealt with according to law; and the said defendant having failed and refused to give bail as required therefore;

You are hereby commanded in the name and by the authority of the said United States to imprison the said Samuel T. Morgan in accordance with law, and that with all convenient speed you
156 remove him hence to the said Middle District of Tennessee and there surrender him to the Marshal of that District, there to be dealt with according to law.

Richmond, Va., July 14, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

Richmond, Va., July 14, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

Certificate of Clerk.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

I, G. E. Bowden, Clerk of the District Court of the United States for the Eastern District of Virginia, do hereby certify that the foregoing is a full and true transcript of the record and proceedings in the therein entitled cause made in obedience to the direction
157 in the return of the Honorable Edmund Waddill, Jr., Judge of said Court to the writ of certiorari, attached to and made a part of said record.

In witness whereof, I have hereunto set my hand and affixed the seal of the said District Court, at the City of Richmond, this 14th day of July, A. D. 1906.

[Seal United States District Court.]

G. E. BOWDEN,
Clerk United States District Court,
By JOSEPH P. BRADY,
Deputy Clerk U. S. District Court.

Certificate of United States District Judge.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

I, Edmund Waddill, Jr., Judge of the District Court of the United States for the Eastern District of Virginia do hereby certify that the foregoing is a full and true transcript of the record and proceedings had before me in the therein entitled cause.

In witness whereof, I hereunto set my hand and seal of said Court at Richmond, this 18th day of July, A. D., 1906.

[Seal United States District Court.]

EDMUND WADDILL, JR.,
United States District Judge.

158 *Conclusions of the Court.*

Filed July 14th, 1906.

In the United States Circuit Court for the Eastern District of Virginia.

In the Matter of the Petition of SAMUEL T. MORGAN for writs of *Habeas Corpus* and Certiorari.

SAMUEL T. MORGAN, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

Petitioner alleges that he is unlawfully deprived of his liberty. He prays that by virtue of the writ of *Habeas Corpus*, he may be discharged from custody. I find from the petition, from its exhibits, and from respondent's reply that petitioner has been committed to the Marshal of the Eastern District of Virginia by an order of the United States District Judge of that District, with directions to remove petitioner to the Middle District of Tennessee, in order that he may be there tried on an indictment in which he with others, is charged with a violation of the laws of the United States The proceedings so resulting were conducted under the provisions of section 1014 of the Revised Statutes of the United States. The Judge so hearing the matter, and so issuing said order of removal, acted in conformity with like proceedings, as provided for in criminal actions in the state of Virginia, in which state petitioner resides, and where the application for his removal was made.

159 On the hearing of this petition, I am asked to permit petitioner to offer testimony, the object of which is to show that probable cause does not exist as to petitioner's guilt of the offense of which he is charged; that he was not within the limits of the jurisdiction of the Middle District of Tennessee when said offense is alleged to have been committed; and testimony tending to show that he is innocent of the charge alleged in the indictment returned against him. Petitioner insists that he should not be removed to said Middle District of Tennessee for trial, but should be discharged from arrest. Should I, on this hearing, permit such testimony? I find from the record before me, that the indictment charges conspiracy; that it is alleged therein that petitioner with others, did in the Middle District of Tennessee, conspire to commit an offense against the laws of the United States. The indictment, in my judgment, sufficiently sets forth such offense. I find that it is in due form, and that it charges a crime; that it alleges a conspiracy such as is prohibited by the laws of the United States; and that an overt act, as described in the statute is charged as having taken

place in the Middle District of Tennessee. Such being the charge, I am of the opinion, under the law applicable thereto, that the personal presence of petitioner in said jurisdiction was not essential; and that he can be lawfully proceeded against in that district; and if the allegations set out in the indictment are sustained by competent evidence, that a conviction there can be upheld.

If such be the case, does it not follow that the testimony offered by the petitioner is immaterial? The indictment charges the commission of a crime; alleges that the petitioner with others committed it; and the laws authorizes his conviction in the district to which he has been ordered removed, if an overt act in pursuance of
160 said conspiracy was committed there. Technical objections to said indictment should not be considered by me on this hearing; they should only be heard by the court in which the indictment was returned.

While it is true that the order to remove for trial should only be issued in cases where probable cause has been shown, it is equally true that a certified copy of the indictment, with proof of the identity of the party accused, has been in a number of well considered cases, held to establish probable cause, and to authorize the warrant of removal. It must be conceded that the authorities are conflicting; but to my mind the path we should follow has been plainly indicated by the opinions of that great tribunal, whose mandates we all obey, whose judgments are the supreme law of the land. In Beavers *v.* Hanckel, 194 U. S., 73, the case rested on the efficacy of the indictment; for no other evidence of guilt was offered. The indictment was held to be *prima facie* evidence of the existence of probable cause. It satisfied the requirements of the constitution, and the laws made thereunder. Why should not the indictment in the case we now have under consideration serve the same purpose? The testimony tendered is, as I understand this case, immaterial, and the identity of the accused is admitted. His guilt or innocence is not to be ascertained by testimony offered in this jurisdiction, in connection with questions involved in the proceedings relating to the warrant of removal, or this writ of *habeas corpus*. That matter must go to the jury impaneled by the court in which the indictment was returned. To hold otherwise would result in inextricable confusion, and to discharge the petitioner on the showing now made, would tend to impede the due administration of justice; and can
161 only be done, in my opinion, by a strained construction of the statutes.

The writ will be dismissed, and petitioner will be remanded to the custody of the Marshal.

NATHAN GOFF,
U. S. Circuit Judge.

July 14th, 1906.

Order Dismissing Petition and Discharging Writ of Habeas Corpus and Allowing Appeal.

Filed July 14th, 1906.

In the Circuit Court of the United States for the Eastern District of Virginia.

In the Matter of the Petition of SAMUEL T. MORGAN for Writs of *Habeas Corpus* and Certiorari.

SAMUEL T. MORGAN, Petitioner,

versus

MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

This cause was on this, the 14th day of July, 1906, heard before the Honorable, the Circuit Court of the United States for the Eastern District of Virginia, the Honorable Nathan Goff, Circuit Court Judge, presiding, upon the petition of said Samuel T. Morgan
162 in this cause and the return of the Marshal, the defendant, thereto, and the return of the District Judge of the Eastern District of Virginia (by agreement the copy of the findings and order of said District Judge being here now taken as his return to said writ of certiorari, and the motion of the petitioner, by his counsel, hereinafter mentioned.

The petition and the return of the Marshal thereto were read, and thereupon the petitioner presented himself as a witness and his counsel moved the Court that he be sworn in order to testify as such, and as such witness to prove the facts averred and set forth in said petition, which facts were then and there repeated and restated to the Court; and his counsel then also stated that the said witness, and other persons then present as witnesses, would testify and prove that the said facts set forth and averred in the petition and exhibits, and repeated by him to the Court, were true.

Thereupon the Honorable Edward T. Sanford, Special Counsel representing the United States, and also the defendant Marshal, objected to the swearing of the said petitioner as a witness and also to the admission of said evidence, upon the ground that said evidence was immaterial and irrelevant, and that it was not allowable to contradict or transverse by evidence in this Court the averments of the indictment which had been found against the petitioner in the Circuit Court of the United States for the Middle District of Tennessee, and that there was no error in the action of the District Judge. The objection so made was sustained, and the witness not allowed to be sworn nor allowed to testify to the facts

above stated, to which action of the Court the petitioner then and there excepted.

163 Thereupon it was ordered and adjudged by the said Court that the petition be dismissed and the writ of *habeas corpus* heretofore issued in this cause upon the said petition be and the same is hereby dismissed and discharged; and that the said Samuel T. Morgan be remanded to the custody of said Morgan Treat, U. S. Marshal, for the Eastern District of Virginia, to be dealt with by him according to the directions of the writ of the process under which he had custody of the said Samuel T. Morgan.

Thereupon, the petitioner presented his petition, setting forth that he was aggrieved by the said order dismissing the said writ of *habeas corpus*, and praying that he be allowed to prosecute an appeal from said final order or judgment, to the Supreme Court of the United States under and according to the law of the United States in that behalf made together with his assignment of error in that behalf which appeal is allowed; and the petitioner having been allowed and the said appeal being hereby granted, the petitioner, by his counsel, thereupon moved the Court that he be enlarged or admitted to bail pending the decision of his said case upon said appeal; and thereupon it was accordingly ordered that the said petitioner and appellant be, and he is hereby enlarged upon his bond and admitted to bail, pending the said appeal to the Supreme Court of the United States; said bond to be in the penal sum of $5,000.00, to be taken and approved by the Clerk of this Court and conditioned for the said petitioner and appellant to appear before this Court to abide such order as shall be made by this Court upon the mandate of the Supreme Court of the United States upon the determination of petitioner's said appeal; and upon the execution by the said Samuel T. Morgan of such bond, with surety or sureties, to be approved by the Clerk of this Court, he will be enlarged and admitted to bail. The Clerk will take as surety any satis-

164 factory guaranty company.

The opinion of the Court in dismissing the petition and discharging the writ of *habeas corpus* is made part of the record herein and will be copied by the Clerk in the transcript on appeal.

NATHAN GOFF,
U. S. Circuit Judge.

July 14, 1906.

Appearance Bond.

Filed July 14th, 1906.

In the Circuit Court of the United States for the Eastern District of Virginia.

In the Matter of the Petition of SAMUEL T. MORGAN for Writs of *Habeas Corpus* and Certiorari.

SAMUEL T. MORGAN, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

We, as principal-, and American Surety Company of New York a guaranty and surety company, organized and existing under the laws of the State of New York, with power and authority to become surety for principals in appearance bonds, jointly and severally acknowledge ourselves to owe and to be bound to the United States of America in the penal sum of Five Thousand Dollars ($5,000.00), severally to be made and levied of our goods, chattels, lands and tenements, if default be made herein.

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The condition of this obligation is as follows: Whereas the said Samuel T. Morgan, being detained in the custody of Morgan Treat, United States Marshal for the Eastern District of Virginia, under commitment and warrant of removal to the Circuit Court of the United States for the Middle District of Tennessee, granted by the Honorable Edmund Waddill, Jr., Judge of the District Court for the Eastern District of Virginia, presented his petition for and sued out a writ of *habeas corpus* from the Circuit Court of the United States for the Eastern District of Virginia, and the said writ of *habeas corpus* duly issued to the said Treat, Marshal, and he made his return thereto; and the said matter of *habeas corpus* came on for hearing before the said Circuit Court of the United States for the Eastern District of Virginia, on the 14th day of July, 1906, when by order thereof the said petition was dismissed and the said writ of *habeas corpus* discharged, and the said Samuel T. Morgan remanded to the custody of the said Morgan Treat, Marshal, to be proceeded with as provided by law; and

Whereas, from the said final order dismissing the said petition and writ of *habeas corpus*, the said Samuel T. Morgan prayed an appeal to the Supreme Court of the United States, which was granted and said appeal perfected; and

Whereas, the said Circuit Court of the United States allow- said appeal, ordered that pending said appeal the said Samuel T. Morgan upon the execution of a bond in the penal sum of Five Thousand Dollars ($5,000.00), conditioned as by said order was provided, might be enlarged and admitted to bail;

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Now, therefore, in compliance therewith, and in order to be so enlarged, the said Samuel T. Morgan as principal, and the said American Surety Company of New York, as surety, execute this bond upon the condition that, if the said Samuel T. Morgan shall duly personally appear in and before the Circuit Court of the United States for the Eastern District of Virginia, then and there to answer the exigency and determination of said appeal, and personally abide the final decision and determination of the said Supreme Court of the United States and of the said Circuit Court of the United States, upon the mandate of the said Supreme Court of the United States, and obey and abide the orders of said Circuit Court of the United States, and not depart without leave upon the conditions aforesaid, and upon the entry of said orders upon said appeal, then and in that event this bond or obligation shall be void; but otherwise it shall be and remain in full force and effect.

In witness whereof, the said Samuel T. Morgan as principal, and the said American Surety Company of New York as surety, the said surety being represented by and through Robert Le Masurier, its duly authorized agent and attorney, have hereunto on this the 14th day of July, 1906, set their hands.

SAMUEL T. MORGAN. [SEAL.]

[Seal of American Surety Company.]

AMERICAN SURETY COMPANY OF NEW YORK,
By ROB'T LE MASURIER, *Agent.*

Signed, sealed and delivered in the presence of
JOSEPH P. BRADY, *Clerk.*

167 *Notice of Appeal.*

Filed July 14th, 1906.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of SAMUEL T. MORGAN for Writs of *Habeas Corpus* and Certiorari.

SAMUEL T. MORGAN, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia; JOSEPH P. BRADY, Deputy Clerk of the District Court of the United States for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

SIRS: Please take notice that Samuel T. Morgan petitioner above named hereby appeals to the Supreme Court of the United States from the final order made and entered on the 14th day of

July, 1906, by the Honorable Nathan Goff, Judge of the Circuit Court of the United States, Fourth Judicial Circuit of Virginia, discharging his application for writs of *habeas corpus* and certiorari and from each and every part of said order.

Dated at the City of Richmond, State of Virginia, on the 14th day of July, 1906.

Respectfully,

JOHN J. VERTRESS,
JAMES C. BRADFORD,
JOHN S. MILLER,
Attorneys for Petitioner and Appellant.

168 *Petition for Appeal.*

Filed July 14th, 1906.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of SAMUEL T. MORGAN for Writs of *Habeas Corpus* and Certiorari.

SAMUEL T. MORGAN, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

The petition of the above named petitioner, Samuel T. Morgan, for an order allowing an appeal to the Supreme Court of the United States from the final order in the above styled cause, discharging the writs of *habeas corpus* and certiorari in this cause and remanding petitioner to the custody of the said Morgan Treat, United States marshal.

Samuel T. Morgan, the petitioner and appellant above named, feeling himself, aggrieved by the final order heretofore made and entered by this Court in this cause on the 14th day of July, 1906, whereby it was ordered that his petition for a writ of *habeas corpus*, directed to said Morgan Treat, United States Marshal, in and for the said District of Virginia, and his writ of certiorari, directed to Hon. Edmund Waddill, Jr., United States District Judge for said
169 District commanding him to return all the proceedings, warrants, depositions, examinations, commitments and record of all proceedings against your petitioner to the Circuit Court of the United States, were, after the same had been duly granted and return made thereon by this Honorable Court, discharged, and petitioner was by said order remanded to the custody of said Morgan Treat, United States Marshal, as aforesaid.

Now come, Jno. J. Vertress and Jas. C. Bradford, his attorneys

and counsel, praying this court for an order allowing your petitioner to prosecute an appeal from said final order of the United States Circuit Court to the Supreme Court of the United States, and according to the laws of the United States in that behalf made.

Your petitioner is advised by his counsel that *in* the proceedings referred to in the petition for writs of *habeas corpus* and certiorari, and the said order discharging the same have infringed the constitutional rights of your petitioner and that the commitment of your petitioner and the restraint of his person referred to in said petition and under said order is without authority of law and that the said United States District Judge acting as United States Commissioner, before whom your petitioner was arraigned, as set forth in said petition hereinbefore referred to had no jurisdiction to either require bail of petitioner or to commit petitioner in default thereof, and your petitioner desires in good faith to submit the constitutional questions and other questions involved to the Supreme Court of the United States for their determination.

And your petitioner will ever pray, etc.

JOHN J. VERTRESS,
JAMES C. BRADFORD,
JOHN S. MILLER,
Attorneys for Petitioner and of Counsel.

170 UNITED STATES OF AMERICA, *Eastern District of Virginia:*

Samuel T. Morgan, being duly sworn on his oath, deposes and says that he is the petitioner above named, that the foregoing petition is true of his own knowledge, except as to those matters which are therein stated on his information and belief, and as to those matters, he believes them to be true.

—— ——.

Sworn to before me this 14th day of July, 1906.

JOSEPH P. BRADY,
Clerk of the United States Circuit Court,
Eastern District of Virginia.

Assignment of Errors.

Filed July 14th, 1906.

In the Supreme Court of the United States.

In the Matter of the Petition of SAMUEL T. MORGAN for Writs of *Habeas Corpus* and Certiorari.

SAMUEL T. MORGAN, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

171 The petitioner, Samuel T. Morgan, by John J. Vertress and Jas. C. Bradford and John S. Miller, his Counsel in connection with his petition of appeal herein, entered herein, to the Supreme Court of the United States, from the final order made and entered in the United States Circuit Court of the Fourth Judicial Circuit in and for the Eastern District of Virginia, discharging the writs of *Habeas Corpus* and certiorari and remanding petitioner to the custody of the said Morgan Treat, Marshal, *and* makes and files the following assignment of errors:

1. The court erred in discharging the petitioner's writs of *Habeas Corpus* and Certiorari and remanding him to the custody of the United States Marshal.

2. In refusing to grant the prayer of said writs.

3. In refusing to discharge said petitioner.

4. In holding that the restraint of the petitioner's liberty is legal.

5. In holding that the restraint of your petitioner is not in violation of his substantial rights.

6. In holding that said alleged indictment or any count thereof stated an offence against the laws of the United States.

7. In holding that the alleged indictment, or any count thereof was sufficient upon which to base a warrant of removal.

8. In holding that there was sufficient evidence of probable cause.

9. In holding that the warrant of removal made by the United States District Judge for the Eastern District of Virginia was issued upon the finding of probable cause; and in not holding that said order & warrant of removal were unauthorized & void because said District Judge refused to receive or hear any evidence offered by petitioner.

10. In holding that the alleged indictment with proof of
172 identity was conclusive evidence of probable cause.

11. In holding that upon the introduction in evidence of the alleged indictment with proof of identity that the defendant, your petitioner, was not entitled to introduce evidence offered by him and in refusing to hear or receive any evidence offered by him to

show that the alleged offence, charged in said indictment and in each count thereof had not been committed by him in the State of Tennessee, in which state the indictment was found and in so holding, violating Article V and Article VI of the Amendments to the Constitution of the United States in that he was deprived of his liberty without due process of law.

12. In failing to hold that your petitioner is deprived of his liberty without due process of law in violation of Article V of the Amendments to the Constitution of the United States, in that said District Judge refused to hear or receive any evidence offered by your petitioner in that the complaint and evidence referred to herein, which were the sole authority for the petitioner's arrest and commitment as aforesaid failed to charge the petitioner with any crime against the laws of the United States.

13. In failing to hold that the petitioner's detention was in violation of Article V of the amendments to the Constitution of the United States in that the said United States District Judge, sitting as United States Commissioner and the United States District Judge has such jurisdiction to order the arrest and commitment of your petitioner, and that your petitioner is held to answer for a crime without any sufficient or valid indictment of a grand jury.

14. In failing to hold that restraint of your petitioner is in violation of Article IV of the Amendments to the Constitution of the United States, because it appears from the indictment upon
173 which the warrant in this case was issued that it was wholly void.

15. In failing to hold the restraint of your petitioner is in violation of the provisions of Article IV of the amendments to the Constitution of the United States for the reasons particularly specified in his petition for a writ of *habeas corpus.*

16. In holding that a warrant of removal should issue for the reason that the proceedings conclusively show, by the indictment that the venue for the facts alleged in the indictment is not and was not in the Middle District of the State of Tennessee or in the State of Tennessee.

17. In failing to hold that the restraint of your petitioner is in violation of the provisions of Article VI of the amendments to the constitution of the United States for the reason that upon the proof offered to be made and rejected by the United States District Judge, sitting as a commissioner, and the United States District Judge and this Honorable Court, sitting upon the hearing of the petition of *habeas corpus,* and by the averments of said petition which were not controverted, it was conclusively shown that the offences charged in the indictment were not committed in the Middle District of the State of Tennessee or in the State of Tennessee, and that he could not be lawfully tried by a jury of the State of Tennessee and of the Middle District of Tennessee where said indictment was found.

18. In holding that the warrant of removal was properly issued, as the record and proceedings conclusively show that the alleged offence, complained of in the indictment and the several counts thereof, did not occur within the Middle District of the State of

Tennessee, or in the State of Tennessee, and that your pe-
174 titioner did not conspire to commit any offence within the State of Tennessee, or in the Middle District thereof.

19. In holding that your petitioner was lawfully in the custody of said Morgan Treat, United States Marshal in and for the Eastern District of Virginia, and was lawfully deprived of his liberty by him by due process of law.

20. For other errors appearing on the record, by reason whereof, the petitioner prays that the said order, discharging said writs of *Habeas Corpus* and Certiorari be reversed and the petitioner discharged from custody.

JOHN J. VERTRESS,
JAMES C. BRADFORD,
JOHN S. MILLER,
Attorneys for Petitioner and Appellant.

Appeal Bond.

Filed July 14th, 1906.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petitioner of SAMUEL T. MORGAN for Writs of *Habeas Corpus* and Certiorari.

SAMUEL T. MORGAN, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

175 Know all men by these presents, that, we, Samuel T. Morgan and James G. Tinsley his surety, are held and firmly bound unto the United States of America, in the full and just sum of Five hundred dollars to be paid to the United States, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this 14th day of July, 1906.

Whereas, lately, to-wit; on the 14th day of July, 1906, at the Circuit Court of the United States, in and for the Fourth Judicial Circuit, Eastern District of Virginia, in a proceeding therein pending, an order was entered discharging the writs of *habeas corpus* and certiorari, of the above named petitioner in the above mentioned proceeding and said petitioner having duly obtained an appeal from the said order to the Supreme Court of the United States and filed a copy thereof in the Clerk's office of said Circuit Court to review the same,

Now, the Condition of the Above Obligation, is such, that if the said petitioner Samuel T. Morgan, shall prosecute said appeal to effect and shall answer all costs if he should fail to make said appeal good, then this obligation to be void; else to remain in full force and effect.

SAMUEL T. MORGAN. [SEAL.]
JAMES G. TINSLEY. [SEAL.]

Sealed, and delivered, and taken and acknowledged, this 14th day of July, 1906, before me,

JOSEPH P. BRADY, *Clerk.*

UNITED STATES OF AMERICA,
Eastern District of Virginia, To wit:

176 James G. Tinsley, being duly sworn says that he is worth more than the sum of Five Hundred Dollars, over and above all his just debts and liabilities.

Sworn to before me this 14th day of July, 1906.

JOSEPH P. BRADY, *Clerk.*

Citation.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of SAMUEL T. MORGAN for Writs of *Habeas Corpus* and Certiorari.

SAMUEL T. MORGAN, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia; Jos. P. BRADY, Deputy Clerk of the District Court of the United States for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Judge L. L. Lewis, United States District Attorney for the Eastern District of Virginia, Jos. P. Brady, Clerk of the United States Circuit Court for the Eastern District of Virginia, Morgan Treat, United States Marshal in and for the Eastern District of Virginia; Hon. Edmund
177 Waddill, Jr., United States District Judge for the Eastern District of Virginia, and Jos. P. Brady, Deputy Clerk of the United States District Court for the Eastern District of Virginia:

You are cited and admonished to be and appear at the Supreme Court of the United States at the City of Washington, within thirty

days from the date of this writ, pursuant to an appeal duly allowed by the Circuit Court for the Fourth Judicial Circuit, Eastern District of Virginia and filed in the Clerk's Office of said Court on the 14th day of July, 1906, in the cause entitled, in the matter of the petition of Samuel T. Morgan for writs of *habeas corpus* and certiorari, Samuel T. Morgan, appellant, *versus*, Morgan Treat, United States Marshal in and for the Eastern District of Virginia, Jos. P. Brady, Deputy Clerk of the District Court of the United States in and for said Eastern District of Virginia, and Hon. Edmund Waddill, Jr., United States District Judge in and for said Eastern District of Virginia, Appellees, to show cause, if any, why the final order of said Circuit Court, rendered against the appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Hon. Nathan Goff, Judge of the United States Circuit Court, this 14th day of July, A. D., 1906.

NATHAN GOFF,
Judge of the Circuit Court
of the United States.

Acceptance of Service by United States District Judge.

Legal service of the within Citation is hereby acknowledged this 21st — July, 1906.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

178 *Marshal's Return.*

Executed this 23rd day of July 1906, by delivering in person in the City of Richmond, Va., a true copy of the within citation to the following named persons viz: L. L. Lewis United States District Attorney for the Eastern District of Virginia, Joseph P. Brady Clerk of the United States Circuit Court for the Eastern District of Virginia, Joseph P. Brady Deputy Clerk of the United States District Court for the Eastern District of Virginia.

MORGAN TREAT,
United States Marshal.

Further executed this 23rd day of July 1906, by delivering in person in the City of Richmond, Va. to Morgan Treat United States Marshal for the Eastern District of Virginia, a true copy of this citation.

MORGAN TREAT,
United States Marshal,
By M. J. ENRIGHT,
Office Deputy Marshal.

179 *Order Transmitting Record.*

And thereupon, it is ordered by the Court here that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the Supreme Court of the United States of America, and the same is transmitted accordingly.

Teste:

JOSEPH P. BRADY,
Clerk United States Circuit Court.

Clerk's Certificate.

THE UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

I, Joseph P. Brady, Clerk of the Circuit Court of the United States for the eastern District of Virginia, do hereby certify that the foregoing is a full and true transcript of the record and proceedings of the said Circuit Court, together with all things thereunto relating, in the therein entitled cause.

In testimony whereof, I hereunto set my hand and affix the seal of the said Circuit Court of the United States for the Eastern District of Virginia, at Richmond, this 10th day of August, A. D., 1906.

[Seal United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Endorsed on cover: File No. 20,336. E. Virginia C. C. U. S. Term No. 371. Samuel T. Morgan, appellant, *vs.* Morgan Treat, United States marshal in and for the eastern district of Virginia, *et al.* Filed August 14, 1906. File No. 20,336.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 372.

AUSTIN B. CARPENTER, APPELLANT,

vs.

MORGAN TREAT, UNITED STATES MARSHAL IN AND FOR THE EASTERN DISTRICT OF VIRGINIA, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

FILED AUGUST 14, 1906.

(20,337.)

(20,337.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906.

No. 372.

AUSTIN B. CARPENTER, APPELLANT,

vs.

MORGAN TREAT, UNITED STATES MARSHAL IN AND FOR THE EASTERN DISTRICT OF VIRGINIA, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 10, 1906.

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a In the Supreme Court of the United States.

In re Petition of AUSTIN B. CARPENTER for Writs of *Habeas Corpus* and Certiorari.

AUSTIN B. CARPENTER, Appellant,

vs.

MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia; Jos. P. BRADY, Deputy Clerk of the District Court of the United States for the Eastern District of Virginia, and Hon. EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Judge L. L. Lewis, United States District Attorney for the eastern District of Virginia; Jos. P. Brady, Clerk of the United States Circuit Court for the eastern district of Virginia; Morgan Treat, United States Marshal in and for the eastern District of Virginia; Hon. Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia, and Jos. P. Brady, Deputy Clerk of the United States District Court for the eastern District of Virginia:

You are cited and admonished to be and appear at the Supreme Court of the United States at the City of Washington, within thirty days from the date of this writ, pursuant to an appeal duly allowed by the Circuit Court for the Fourth Judicial Circuit, Eastern District of Virginia, and filed in the Clerk's office of said Court on the 14th day of July, 1906, in the cause entitled, in the matter of the *b* petition of Austin B. Carpenter for writs of *habeas corpus* and certiorari Austin B. Carpenter, Appellant, *versus*, Morgan Treat, United States Marshal in and for the eastern District of Virginia, Jos. P. Brady, Deputy Clerk of the District Court of the United States in and for said eastern District of Virginia, and Hon. Edmund Waddill, Jr., United States District Judge, in and for said Eastern District of Virginia, Appellees, to show cause, if any, why the final order of said Circuit Court, rendered against the appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Hon. Nathan Goff, Judge of the United States Circuit Court, this 14th day of July, A. D., 1906.

NATHAN GOFF,
Judge of the Circuit Court of the United States.

c Legal service of the within citation is hereby acknowledged this 21st July, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge.

Executed this 23rd day of July 1906 by delivering in person in the City of Richmond, Va. a true copy of the within citation to the following named persons viz: L. L. Lewis United States District Attorney for the Eastern District of Virginia, Joseph P. Brady Clerk of the United States Circuit Court for the Eastern District of Virginia, Joseph P. Brady Deputy Clerk of the United States District Court for the Eastern District of Virginia.

MORGAN TREAT,
United States Marshal.

Marshal's Fees for service $6.00.

Further executed this 23rd day of July 1906 by delivering in person in the City of Richmond, Va. to Morgan Treat United States Marshal for the Eastern District of Virginia, a true copy of the within citation.

MORGAN TREAT,
United States Marshal,
By M. J. ENRIGHT,
Office Deputy Marshal.

Marshal's Fees for services $2.00.

d [Endorsed:] No. —. Circuit Court of the U. S., Eastern District of Virginia. In the matter of the Petition of Austin B. Carpenter for Writs of *Habeas Corpus* and Certiorari. Austin B. Carpenter, Appellant, *vs.* Morgan Treat, United States Marshal &c., *et als.*, Appellees. Citation. Filed this 14th day of July, 1906. Joseph P. Brady, Clerk.

1 *Transcript of Record.*

THE UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

At a Circuit Court of the United States for the Eastern District of Virginia, begun and held at the Court Rooms in the Custom House, in the City of Richmond, Virginia, on the first Monday in April, being the second day of the same month, in the year of our Lord one thousand, nine hundred and six.

Present: The Honorable Nathan Goff, Judge of the Circuit Court of the United States for the Eastern District of Virginia.

Among other were the following proceedings, to-wit:

In the Matter of the Petition of AUSTIN B. CARPENTER for Writs of of *Habeas Corpus* and Certiorari.

AUSTIN B. CARPENTER, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

2 *Petition for Writs of Habeas Corpus and Certiorari.*

Filed July 14, 1906.

In the District Court of the United States for the Eastern District of Virginia.

In the Matter of the Petition of AUSTIN B. CARPENTER for Writs of *Habeas Corpus* and Certiorari.

AUSTIN B. CARPENTER, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

To the Honorable the Judges of the Circuit Court of the United States for the Eastern District of Virginia:

The petition and complaint of Austin B. Carpenter respectfully shows to the Court:

1.

That your petitioner is a citizen of the United States, and is not a citizen or resident of the Middle District of Tennessee and is unlawfully imprisoned and restrained of his liberty by Morgan Treat, United States Marshal for the Eastern District of Virginia, in the City of Richmond, and County of Henrico, in said District.

3 That your petitioner is held by said Marshal under color and claim of authority of the United States, by virtue of a warrant for removal claimed to have been issued under section 1014 of the Revised Statutes of the United States, dated July 14, 1906, signed by the Honorable Edmund Waddill, Jr., Judge of the District Court of the United States for the Eastern District of Virginia, and has been committed and is detained only under and by virtue of said warrant, and not by virtue of any judgment, decree or final order of any court.

2.

On the 14th day of July, 1906, at the said City of Richmond, in said District, complaint in writing signed and sworn to by

Morgan Treat, United States Marshal in and for said District, a copy of which is hereto attached, marked "Exhibit A," and made part hereof, was presented to the Honorable Edmund Waddill, Jr., Judge of the District Court of the United States for the said District, in and by which it was averred that he, the said Morgan Treat, United States Marshal, had good cause to believe and did believe that your petitioner has been indicted by the grand jury of the Circuit Court of the United States in and for the Middle District of Tennessee, for that your petitioner on the 8th day of July, 1903, and during the period of time from that date until and on the first day of September, 1905, and being during said period Manager and Agent of Armour and Company, a corporation existing under the laws of the State of Illinois did, in said Middle District of Tennessee, unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section 1 of the Act of Congress
4 approved July 2, 1890, entitled "An Act to protect trade and commerce against restraints and monopolies," and that on the 8th day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, your petitioner did unlawfully conspire with divers other persons and corporations to commit an offense against the United States, to-wit: The offense of engaging in a combination in restraint of trade and commerce among the several States of the United States, all as more fully set out in an indictment filed in the said Circuit Court of the United States in and for the Middle District of Tennessee on May 25th, 1906, a certified copy of which indictment said complaint states was thereto attached and made a part of said complaint, and in and by which said complaint, said complainant did, therefore, charge that your petitioner did commit the said offense against the United States in the manner and form as set forth in said indictment, and did furthermore aver in said complaint upon information and belief, that your petitioner is now believed to be within the Eastern District of Virginia.

And said complainant, said Morgan Treat, United States Marshal, in and by said complaint did therefore pray that your petitioner might be arrested, imprisoned, and removed or bailed, as the case might be, for trial before said Circuit Court of the United States for the Middle District of Tennessee, and further dealt with according to law; all of which will appear from the said complaint, a copy of which is hereto attached as aforesaid, reference thereto being hereby made for greater certainty. And that thereupon, to-wit, on
5 the said 14th day of July, 1906, a warrant for his arrest was issued by the Honorable Edmund Waddill, Jr., Judge as aforesaid, upon the aforesaid complaint, which came to the hands of the said Morgan Treat, Marshal as aforesaid, and he, in obedience thereto, arrested your petitioner and brought him before the said Honorable Edmund Waddill, Jr., Judge as aforesaid, and made return of said warrant, endorsed thereon, and a copy of said warrant

with the endorsement thereon is hereto attached marked "Exhibit B" and made a part hereof.

3.

That thereupon then and there, the United States Attorney in and for the said Eastern District of Virginia, for and on behalf of the United States, did offer and introduce in evidence to and before the said Judge, in support of the averments of the said complaint of said Morgan Treat, United States Marshal, a certified copy of the said indictment mentioned and referred to in the said complaint. A certified copy of said indictment so offered and introduced in evidence is hereto attached, marked "Exhibit C," and made a part hereof, and the identity of your petitioner with and as the Austin B. Carpenter mentioned and referred to in said indictment as one of the defendants therein, having been then and there admitted by your petitioner, the Government, the United States of America, introduced or offered no other or further proof or evidence in support of the said complaint or of the averments therein, but rested its case upon the said hearing of the said complaint before the said Judge.

4.

That thereupon, then and there, your petitioner, by his counsel, proceeded to offer, and offered, proof and evidence, by
6 witnesses then and there, present, then and there to prove and show that your petitioner did not within the said Middle District of Tennessee, on the 8th day of July, 1903, or during the period between the 8th day of July, 1903 and the 1st day of September, 1905, or at any other time, engage in the said alleged conspiracies in the said indictment mentioned, or any or either of them, or at any time or at any place, join in or assent to the said alleged conspiracies, engaged in or entered upon in said Middle District of Tennessee, or any or either of them, or at any time or at any place do any act in furtherance of, or to effect the object of said alleged conspiracies engaged in in said Middle District of Tennessee, or any or either of them. Thereupon, then and there, the Counsel for the Government, upon the said hearing, did object to the introduction on the behalf of your petitioner of the said evidence or any evidence or proof tending to contradict or controvert the respective averments, or any or either of them in the said indictment and in the respective counts thereof, viz., that your petitioner did engage in the said alleged conspiracy in said indictment mentioned and referred to, in the said Middle District of Tennessee, in manner and form as in the said indictment in that behalf averred, or to contradict or controvert or disprove any of the averments in the said indictment contained,—on the ground, then and there stated, that upon the said hearing of said complaint, the said certified copy of the said indictment was conclusive evidence of every fact therein averred to sustain and prove upon the said hearing the said complaint of the said Morgan Treat, United States Marshal, and the averments thereof, and the probable cause of the commission by

your petitioner of the said supposed offenses in the said in-
7 dictment mentioned and of any and every of them in the manner and form as in the said indictment averred, and in that behalf, your petitioner then and there took the witness stand and demanded to be sworn as a witness in his own behalf, but the Counsel for the Government objected, and the objection was by said Judge sustained, and he was not permitted to be sworn or to testify.

5.

That thereupon, then and there, your petitioner by his counsel stated to the Judge that he would prove, and then and there his said counsel offered to prove by your petitioner as a witness the following facts, which facts are true, that is to say:

That said alleged conspiracies which are in the said indictment mentioned were not, nor was any or either of them, engaged in, at or within said Middle District of Tennessee.

That said Austin B. Carpenter did not, at or within said Middle District of Tennessee engage in, or do or take part in any act, matter or thing in or about or with respect to the engaging in, promoting or furthering the said alleged conspiracies or any or either of them, or to effect the object thereof.

That said Austin B. Carpenter did not, at any time or at any place join in, assent to, or know of said alleged conspiracies or any or either of them, engaged in or entered upon in said Middle District of Tennessee or any conspiracy which had been or was engaged in at or within said Middle District of Tennessee, or do any act, matter or thing in or about the formation, engaging in, furthering or promoting or to effect the object of any such conspiracy as is hereinabove referred to.

8 That if said alleged conspiracies which are in said indictment mentioned or referred to, or any or either of them, ever were or was engaged in at or within the Middle District of Tennessee by said other defendants or any or either of them or by any corporations or persons, the said Austin B. Carpenter did not, at any time or at any place engage in or join, or assent to, or know of the same or do any act in or about the engaging in or promotion thereof or to effect or towards effecting the object of the same.

6.

That the United States Attorney, on behalf of the Government, then and there objected to the introduction or reception by the said Judge of the said evidence so offered on behalf of your petitioner, and to each and every part thereof, on the ground hereinbefore stated, which objection was then and there sustained by the Court on the ground that the said certified copy of the said indictment so introduced on behalf of the Government, the identity of your petitioner as aforesaid being admitted by your petitioner as aforesaid, was conclusive evidence of the existence of every fact stated in the indictment, including the averments that the conspiracies alleged in the said indictment were engaged in in the Middle District of Tennessee, and that therefore said evidence or any evidence

offered by and on behalf of your petitioner to controvert, contradict or disprove the averments of the said indictment in that behalf, or any or either of them, was incompetent and inadmissable; and the said Judge, then and there, on the grounds aforesaid, excluded and refused to receive said evidence so offered on behalf of your petitioner, or any part thereof, to which ruling of the Judge, your petitioner then and there, by his counsel, duly excepted.

9 7.

That thereupon the said Judge, upon the complaint and upon the evidence so introduced for and on behalf of the Government as aforesaid, made and signed a certain order reciting his said rulings as aforesaid and ordering as in said order appears, which said order is as follows:

THE UNITED STATES OF AMERICA,
Eastern District of Virginia:

THE UNITED STATES
vs.
AUSTIN B. CARPENTER.

This is an application under the provisions of section 1014 of the United States Revised Statutes for a warrant for the removal of Austin B. Carpenter to the Middle District of Tennessee and comes before me as follows:

The District Attorney for this District, together with Mr. E. T. Sanford, Counsel for the United States, presented to me, a verified complaint of Morgan Treat, United States Marshal for this District, with the certified copy of an indictment filed on May 25th, 1906, in the Circuit Court of the United States for the Middle District of Tennessee in the case of the United States *vs.* Virginia-Carolina Chemical Company and others defendants, including among such defendants the said Austin B. Carpenter.

Said complaint and copy of said indictment are made parts of this order.

Upon the exhibition of this indictment and affidavit and the *ex parte* motion of the Counsel for the United States, I made
10 an order for the arrest of the said Austin B. Carpenter and his production before me.

This order was duly executed by the said Marshal, who arrested the said Austin B. Carpenter and brought him before me in Richmond on this 14th day of July, 1906, as shown by his return. When the accused was so brought before me it was moved by the Counsel for the United States that inasmuch as the indictment charged offenses against the United States triable in the Circuit Court of said United States for the Middle District of Tennessee, and the identity of the defendant was admitted, that an order be forthwith made for the commitment of said Austin B. Carpenter for trial before the said Circuit Court.

It was further stated and agreed that while the defendant Austin B.

Carpenter was not a resident of the Eastern District of Virginia, he was present in this District with his counsel, and that so far as the jurisdiction in the Eastern District of Virginia was concerned, he consented to these proceedings being instituted here, and to their being conducted here with the same force and effect, and in like manner as if he were a resident of the Eastern District of Virginia; and furthermore waived the previous issuance of any bench warrant for his arrest, from the Circuit Court of the Middle District of Tennessee, if the same were necessary.

This motion was made upon the certified copy of the indictment without any further testimony, the identity of the party arrested and brought before me with the Austin B. Carpenter mentioned in the indictment being admitted.

And thereupon the defendant, Austin B. Carpenter, offered himself as a witness in his own behalf, and being about to be sworn, the United States, by its Counsel, thereupon objected to the witness
11 being sworn, or to any testimony being given in rebuttal of the indictment in these proceedings, on the ground that the identity of the defendant being admitted, inasmuch as the indictment on its face charges offenses against the United States committed and triable in the jurisdiction in which the defendant stands indicted, no evidence is admissable here to impeach the indictment, and the order of commitment should be made without other proof.

The defendant's counsel thereupon offered to prove by the defendant, and other witnesses then and there present that the Circuit Court for the Middle District of Tennessee had no jurisdiction over the person of said defendant touching the offense charged in said indictment, in that defendant and said other witnesses would, if permitted, testify

That said alleged conspiracies which are in the said indictment mentioned were not, nor was any or either of them, engaged in, at or within said Middle District of Tennessee.

That said Austin B. Carpenter did not, at or within said Middle District of Tennessee engage in, or do or take part in any act, matter or thing in or about with respect to the engaging in, promoting or furthering the said alleged conspiracies or any or either of them, or to effect the object thereof.

That said Austin B. Carpenter did not, at any time or at any place join in, assent to, or know of said alleged conspiracies or any or either of them, engaged in or entered upon in said Middle District of Tennessee, or any conspiracy which had been or was engaged in at or within said Middle District of Tennessee, or
12 do any act, matter or thing in or about the formation, engaging in, furthering or promoting or to effect the object of any such conspiracy as is hereinabove referred to.

That if said alleged conspiracies which are in said indictment mentioned or referred to, or any or either of them, ever were or was engaged in at or within the Middle District of Tennessee by said other defendants or any or either of them, or by any corporation or persons, the said Austin B. Carpenter did not, at any time or at any

place engage in or join, or assent to, or know of the same, or do any act in or about the engaging in or promotion thereof or to effect or towards effecting the object of the same. Nor has defendant done, or performed, or been engaged in, or a party to the same, or any of them in any other place or places at any other time or times whatsoever.

Thereupon Counsel for the Government renewed its objections as aforesaid.

After hearing counsel on both sides the Court announced its conclusions as follows:—

"The conclusion reached by the Court is that in a proceeding for the arrest and the removal of persons charged with a violation of the laws of the United States pursuant to section 1014 of the Revised Statutes of the United States, before a United States District Judge, sitting in the State of Virginia, in which State there no longer exists the right of a preliminary examination upon a crime charged prior to the trial upon the merits, when said Judge is called upon to act as well in the matter of the apprehension of such persons, as in their removal to the jurisdiction in which they have been indicted, that upon the Government's presentation of a sufficient indictment regularly found by a grand jury in a court of the United States,
13 properly charging the commission of an offense within the district in which such indictment is found, coupled with proof of the identity of the person indicted, it is its duty to properly bail such person for appearance before the court in which he is indicted, or cause him to be removed thereto."

Therefore it was ordered that the testimony offered is inadmissable, and will not be received, and I therefore made the following order:

UNITED STATES OF AMERICA,
Eastern District of Virginia, set:

The within named Austin B. Carpenter having been brought before me, and identified; and it appearing by a duly authenticated copy of an indictment that he stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," for violation of section one of the act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for violation of section 5440 of the Revised Statutes of the United States, it is ordered that the said Austin B. Carpenter give bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial before said Court under the said indictment; or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee,
14 to be there dealt with according to law.

Richmond, Va., July 14, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

And after said order had been made and the defendant declined to give bond, the Counsel for the United States moved that the warrant do issue directed to the Marshal of this District for the imprisonment and removal of the said Austin B. Carpenter to the Middle District of Tennessee, and his delivery to the custody of the United States Marshal of that District.

On such motion counsel for the said Austin B. Carpenter objected and again offered the said Austin B. Carpenter as a witness, together with the other witnesses here-before referred to, to establish the same matter and facts as hereinbefore stated with regard to the objection to the order for the commitment of the said Austin B. Carpenter which testimony was again offered and was again objected to by the counsel for the United States on the same grounds above set forth, and on the further ground that these matters could not now be inquired of in this stage of the proceedings, and was again excluded by the Court, to all of which counsel for the said Austin B. Carpenter then and there duly excepted and had the exceptions noted and entered.

(Signed) EDMUND WADDILL, JR., *Judge.*

I therefore issued a warrant directed to the Marshal as follows:

15 *Warrant of Imprisonment and Removal.*

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The President of the United States to the United States Marshal of the Eastern District of Virginia, Greeting:

Whereas it has been made to appear that Austin B. Carpenter stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled: "The United States *vs.* Virginia-Carolina Chemical Company *et al.,*" for violation of section one of the act of Congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States; and whereas the said Austin B. Carpenter having been brought before me, and identified; and a certified copy of said indictment furnishing probable cause to believe him guilty as therein charged, and whereas it was thereupon ordered by me that said defendant give bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial under said indictment, or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee to be there dealt with according to law; and the said defendant having failed and refused to give bail as required, therefore;

You are hereby commanded in the name and by the authority of the said United States to imprison the said Austin B.
16 Carpenter in accordance with law, and that with all convenient speed you remove him hence to the said Middle Dis-

trict of Tennessee and there surrender him to the Marshal of that District, there to be dealt with according to law.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

Richmond, Va., July 14, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

Richmond, Va., July 14th, 1906.

8.

Your petitioner further says that he is advised, and he charges and submits, that under and by virtue of Clause 3, of Section 2, of Article 3, of the Constitution of the United States, and of the Sixth Amendment to the said Constitution, your petitioner is entitled to be tried and can only be indicted and tried for any alleged offenses against the Laws of the United States, in the State and District in which the offense, which the indictment charges, was committed; that the said supposed offenses in the said indictment mentioned and charged, were not, nor was any or either of them, committed in the said Middle District of Tennessee; that none of the alleged acts, transactions, matters or things which are in the said indictment mentioned or referred to as being and constituting the supposed engaging by this defendant in the said alleged conspiracies in the said indictment referred to, or any or either of them, were done or held or took place within the said Middle District of Tennessee, and no alleged act, transaction, matter or thing, in the said indictment mentioned or referred to as being the doing by this defendant of an act to effect the object of said conspiracy was done or held or took place within the Middle District of Tennessee;

17 That said alleged conspiracies which are in the said indictment mentioned were not, nor was any or either of them, engaged in, at or within said Middle District of Tennessee.

That said Austin B. Carpenter did not, at or within said Middle District of Tennessee engage in, or do or take part in any act, matter or thing in or about or with respect to the engaging in, promoting or furthering the said alleged conspiracies or any or either of them, or to effect the object thereof.

That said Austin B. Carpenter did not, at any time or at any place join in, assent to, or know of said alleged conspiracies or any or either of them, engaged in or entered upon in said Middle District of Tennessee, or any conspiracy which had been or was engaged in at or within said Middle District of Tennessee, or do any act, matter or thing in or about the formation, engaging in, furthering or promoting or to effect the object of any such conspiracy as is hereinabove referred to.

That if said alleged conspiracies which are in said indictment mentioned or referred to, or any or either of them, ever were or was engaged in at or within the Middle District of Tennessee by said

other defendants or any or either of them or by any corporations or persons, the said Austin B. Carpenter did not, at any time or at any place engage in or join, or assent to, or know of the same or do any act in or about the engaging in or promotion thereof or to effect or towards effecting the object of the same, or do any act in pursuance of the said alleged conspiracies in the said indictment mentioned, or any or either of them, in furtherance of the said alleged conspiracies in said indictment mentioned, or any or either
18 of them, or to effect the object of the same, or as an act on the part of your petitioner of engaging in the same.

9.

That thereupon, the United States Attorney moved the commitment of your petitioner to the Marshal of the said District for removal to the Middle District of Tennessee for trial upon the indictment in the United States Circuit Court for said District, and the said Attorney for the United States thereupon made a motion before the Honorable Edmund Waddill, Jr., Judge, for the issuance of a warrant for the removal of your petitioner to the Middle District of Tennessee for trial as aforesaid in the United States Circuit Court for said District upon the said indictment, and the said motion was allowed, and said warrant was in pursuance thereof issued by the said Judge, and a copy thereof is embraced in the order of the said Judge hereinbefore recited as and made a part hereof. That thereupon the said Marshal of the Eastern District of Virginia, to whom the said warrant was directed, took your petitioner into custody upon the said warrant and now holds your petitioner thereunder and threatens to take and remove your petitioner to the Middle District of Tennessee, as directed by the said warrant and will do so, unless your Honor shall issue the writ of *Habeas Corpus* herein prayed for. Your petitioner further says that in case your petitioner is removed under the said warrant to the said Middle District of Tennessee for trial upon said indictment and is there held for trial and tried upon said indictment, your petitioner will not be tried within the District in which the said alleged offenses charged in the said indictment were committed, as required by the Sixth
19 Amendment to the Constitution of the United States, and by Clause 3, of Section 2, of Article 3 of said Constitution, and will be tried in violation of his rights under said provisions of the said Constitution. Your petitioner further says that he is advised, and he charges, that the said indictment does not charge the commission by your petitioner of any offense against the Laws of the United States, and that same is in that behalf insufficient and void.

10.

That the imprisonment and detention of your petitioner is without authority of law, and the said proceedings before said United States District Judge are illegal and the said warrant of removal was illegally issued and in violation of Article 3, Section

2, of the Federal Constitution, and of the Sixth Amendment to the said Constitution; and that then and there by the said rulings of the said District Judge, in the exclusion of the said evidence and in holding that the said certified copy of the indictment was conclusive evidence as aforesaid, and in refusing to permit your petitioner to introduce any evidence on his behalf, as aforesaid, your petitioner was deprived of rights secured to him by the said provisions of the said Constitution and by section 1014 of the Revised Statutes, and was and is by said Morgan Treat, United States Marshal, deprived of his liberty without due process of law.

Wherefore your petitioner prays that a writ of *Habeas Corpus* be issued, directed to the said United States Marshal of the Eastern District of Virginia, who has your petitioner in custody, demanding him to bring the body of your petitioner before this Court forthwith; and further that a writ of Certiorari be directed to the said Honorable Edmund Waddill, Jr., Judge as aforesaid, commanding that he return all proceedings against this petitioner to this court forth-
20 with, for such action as may be proper in the premises.

AUSTIN B. CARPENTER.

JOHN J. VERTRESS,
JAMES C. BRADFORD,
JOHN S. MILLER,
Attorneys for Petitioner & of Counsel.

UNITED STATES OF AMERICA,
Eastern District of Virginia, County of Henrico, ss:

Austin B. Carpenter being duly sworn, deposes and says that he has read the foregoing petition, and knows the contents thereof, and that the same is in all respects true.

AUSTIN B. CARPENTER.

Sworn to and subscribed to before me this 14th day of July, 1906.
JOSEPH P. BRADY,
Clerk U. S. Circuit Court.

21 EXHIBIT "A."

UNITED STATES OF AMERICA, *Eastern District of Virginia, set:*

On this 14th day of July, A. D. 1906, at the City of Richmond, in the said District, before the Honorable Edmund Waddill, Jr., Judge of the District Court of the United States of America for the said District, comes Morgan Treat, United States Marshal in and for the said District, and upon his oath complains and says: that he has good cause to believe and does firmly believe that Austin B. Carpenter stands indicted by the grand jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said Austin B. Carpenter on the eighth day of July in the year

1903, and during the period of time from that date until and on the first day of September in the year 1905, being during said period manager and agent of Armour and Company a corporation existing under and by the laws of the State of Illinois did in the said Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said Austin B. Carpenter did unlawfully conspire with divers other persons and corporations to commit an offense against the United States, to-wit, the offense of engaging in a combi-
22 nation in restraint of trade and commerce among the several States, all as more fully set out in an indictment filed in the said Circuit Court of the United States in and for the Middle District of Tennessee on May 25, 1906, in cause No. 963, entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," a certified copy of which indictment is hereto attached and made a part of this complaint; and complainant therefore charges that the said Austin B. Carpenter did commit the said offenses against the United States in manner and form as set forth in said indictment.

Complainant furthermore avers upon information and belief that said Austin B. Carpenter is now believed to be within the Eastern District of Virginia.

Wherefore this complainant prays that the said Austin B. Carpenter may be arrested and imprisoned and removed or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee, and further dealt with according to law.

MORGAN TREAT, *Marshal.*

Subscribed and sworn to before me by the above named the day and year first above written.

(Signed) EDMUND WADDILL, JR.

EXHIBIT "B."

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

To the Marshal of the Eastern District of Virginia, Greeting:

Whereas complaint in writing, on oath, has been made to me charging that Austin B. Carpenter stand- indicted by the
23 grand jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said Austin B. Carpenter on the eighth day of July, in the year 1903, and during the period of time from that date until and on the first day of

September in the year 1905, did in the Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said Austin B. Carpenter did unlawfully conspire with divers other persons and corporations to commit an offense against the United States, to-wit, the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States; and application has been made to me that the said Austin B. Carpenter may be arrested and imprisoned and removed or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee;

Now therefore, you are hereby commanded to arrest the said Austin B. Carpenter if he be found within your said District, and bring him forthwith before me at my Chambers in Richmond, in order that he may be dealt with according to law.

EDMUND WADDILL, JR.,
District Judge.

Richmond, July 14, 1906.

24 Pursuant to the within writ, I have taken the defendant Austin B. Carpenter into custody and now have him before Hon. Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia

MORGAN TREAT,
United States Marshal.

July 14th, 1906.

25 EXHIBIT C.

In the Circuit Court of the United States of America for the Middle District of Tennessee, of the April Term, in the Year of Our Lord Nineteen Hundred and Six.

MIDDLE DISTRICT OF TENNESSEE, *sct:*

The grand jurors for the United States of America, inquiring for the Middle District of Tennessee, upon their oath present, that before and on the eighth day of July, in the year of our Lord nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year of our Lord nineteen hundred and five, the following named corporations, respectively organized and existing under and authorized by the laws of the several States and of the foreign country here named in connection with them, and hereafter in this indictment called corporation defendants, to wit, the Virginia-Carolina Chemical Company, of New Jersey, Armour and Company, of Illinois, the Acme Manufacturing Company, of North Carolina, the Alabama Chemical Company, of New Jersey, the Anderson Phosphate & Oil Company, of South Carolina, the Ashepoo Fertilizer Company, of South Carolina, the Blackshear Manufacturing Company, of Georgia, the Etiwan Fertilizer Company, of South Carolina, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, The Furman Farm Improvement Company, of Georgia, the Goulding Fertilizer Company, Limited, of Great Britain and Ireland, The Goulding Fertilizer Company, of Florida, the Gulfport Cotton Oil, Fertilizer & Manufacturing Company, of Georgia, the Home Mixture Guano Company, of Georgia, the Jackson Fertilizer Company, of Mississippi, the Marietta Fertilizer Company, of Georgia, the Meridian Fertilizer Factory, of Mississippi, the National Fertilizer Company, of Tennessee, the New Orleans Acid and Fertilizer Company, of New Jersey, the Old Dominion Guano Company, of Georgia, the Planters Chemical Company, of Alabama, the
26 Read Phosphate Company, of West Virginia, the F. S. Royster Guano Company, of Virginia, the Savannah Guano Company, of Georgia, the Southern States Phosphate and Fertilizer Company, of Georgia, the Standard Chemical & Oil Company, of Alabama, the Standard Guano and Chemical Manufacturing Company, of Louisiana, Swift & Company, of Illinois, the Tennessee Chemical Company, of Tennessee, and the Tennessee Valley Fertilizer Company, of Alabama, and certain firms, to wit, the firm of A. D. Adair and McCarty Brothers and the firm of Wilcox, Ives & Company, did carry on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereafter in this indictment called the States of the conspiracy, as wholesale dealers in complete and alkaline fertilizers and in acid phosphates, nitrates, and potash salts suitable for fertilizers, which then were useful and valuable

articles of merchandise, indispensable for use on the soil of the said States of the conspiracy in order that the staple crops of those States might be raised therefrom; that the following named persons, hereafter in this indictment called individual defendants, to wit, Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, of the said Virginia-Carolina Chemical Company, and J. Rice Smith, agent and manager of the said Virginia-Carolina Chemical Company, and president of the Georgia Chemical Works hereinafter mentioned, Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, Fred G. Brown, president and treasurer of the said Anderson Phosphate & Oil Company, Frank Burbidge, president, and William J. McCormack, treasurer, of the said Etiwan Fertilizer Company, George Braden, president of the said Federal Chemical Company, of Delaware, and also of the said Federal Chemical Company, of Kentucky, Augustus D. Adair and James D. McCarty, officers and agents of the said Furman Farm Improvement Company and members of the said firm of A. D. Adair and McCarty Brothers, William DeC. Kessler, secretary and treasurer of the said Goulding Fertilizer Company, Limited, James G. Tinsley, president of the said Marietta Fertilizer Company and vice-president of the said Tennessee Chemical Company, William D. Rhea, general manager of the said National Fertilizer Company, William L. Peel, president of the said Old Dominion Guano Company, Abram C. Read, vice-president and general manager, and Isaac Mayo Read, agent, of the said Read Phosphate Company, Frank S. Royster, president, and Charles F. Bur-
27 roughs, vice-president, of the said F. S. Royster Guano Company, A. J. Ives, whose Christian name is to the said grand jurors unknown, secretary and treasurer of the said Savannah Guano Company and a member of the said firm of Wilcox, Ives & Company, T. Porter Fleming, vice-president of the said Southern States Phosphate and Fertilizer Company, and T. Garland Tinsley, president and treasurer of the said Tennessee Chemical Company, in their said several capacities as officers, managers, agents, and attorneys of the said corporation defendants and members of the said firms, and on behalf of those corporations and firms, during the period of time in this indictment first aforesaid, did carry on the business aforesaid; that in so carrying on the said business the said defendants, that is to say, the said corporation and individual defendants, did sell and deliver large quantities of the said merchandise within the limits of the said States of the conspiracy from the respective places of business of the said corporation defendants and the said firms, located at different points within those States, to retail dealers in and consumers of such merchandise, in such States respectively, and did also ship large quanti-es of the same from their respective places of business, located in the said States of the conspiracy and also in the States of Virginia, Illinois, and Kentucky, into and through other of the said States than those in which their said places of business were located; that in so carrying on the said busi-

ness and shipping the said merchandise from one of the said States into and through another or others thereof, the said defendants, during the period aforesaid, were engaged in trade and commerce among the States of this Union within the meaning of the Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in so carrying on the said business, trade and commerce, the said Virginia-Carolina Chemical Company and the said Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, and J. Rice Smith, agent and manager, of the said Virginia-Carolina Chemical Company, did make use of and operate a portion of their said business, trade and commerce through each of certain other corporations, to wit, the American Fertilizer Company, of Virginia, the Birmingham Fertilizer Company, of Alabama, the Coweta Fertilizer Company, of Georgia, the Georgia Chemical Works, of Georgia, the Navassa Guano Company, of North Carolina, of either the whole or a majority of the capital stock of which said corporations respectively the said Virginia-Carolina Chemical Company was the owner;
28 that in so carrying on the said business, trade and commerce, the said Armour and Company and the said Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, did make use of and operate all of their said business, trade and commerce through a certain other corporation called the Tuscarora Fertilizer Company, of New Jersey, and a certain trade name, to wit, the trade name of Armour Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Furman Farm Improvement Company and the said firm of A. D. Adair and McCarty Brothers did make use of and operate a portion of their said business trade, and commerce under the trade name of Chickamauga Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Federal Chemical Company, of Delaware, and the said Federal Chemical Company of Kentucky, did make use of, and operate a portion of their said business, trade and commerce through, the names of Century Phosphate Company, Fox Chemical Company, Branch Globe Fertilizer Company, Branch and Tennessee Phosphate Company; that in so carrying on the said business, trade and commerce, the said National Fertilizer Company did make use of, and operate a portion of its said business, trade and commerce through, the corporate name of American Guano Company and the trade name of Nashville Guano Company; that in so carrying on the said business, trade and commerce, the said Read Phosphate Company did make use of, and operate a portion of its said business, trade and commerce through the corporate name of Empire Guano Company; that in so carrying on the said business, trade and commerce, the said F. S. Royster Guano Company did make use of, and operate a portion of its said business, trade and commerce through the trade name of Atlantic Chemical Company and the corporate name of Columbia Guano Company; that in so carrying on the said business, trade and

commerce, the said Swift and Company did make use of, and operate the whole of its said business, trade and commerce through, the trade name of Swift Fertilizer Works; and that in so carrying on the said business, trade and commerce, the said Tennessee Chemical Company did make use of, and operate a portion of its said business, trade and commerce through, the trade name of Continental Fertilizer Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that of the total volume of such business, trade and commerce then so being carried on by the said defendants and their competitors, the said defendants together had and controlled the principal part, that is to say, ninety per centum thereof; and
29 that because the said corporation defendants and the said firms were in fact separate and distinct from each other, they should have conducted their interstate trade and commerce strictly in competition with each other, during the said period, and then would have so conducted the same but for the unlawful conspiracy in restraint of the said business, trade and commerce in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, at and within the said Middle District of Tennessee, in violation of the provisions of said section one of the said Act of Congress, unlawfully did knowingly engage in a conspiracy in restraint of the said business, trade and commerce, so then being carried on by them in the manner aforesaid, whereby the said business, trade and commerce was restrained in the several ways and by the several means now here set forth and described, that is to say:

Competition as to the prices at which the said merchandise was sold and delivered by the said corporation defendants and the said firms in the said States of the conspiracy, which before the period of time in this indictment first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was prevented and destroyed by the said defendant from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them styled "current, reasonable market prices," for the said merchandise so sold and delivered by the said corporation defendants and the said firms in those States, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so fixed and caused to be fixed; which said uniform and non-competitive prices were prices greatly in excess of the prices which but for the said unlawful conspiracy would at such times have prevailed for the said merchandise in the said business, trade and commerce, and were prices therefore unreasonable, and were a tax on the people of the said States of the said conspiracy amounting to a large sum of money, to wit, four million dollars, annually during the continuance of the same.

For and on account of such quantity of the said merchandise as was sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts allotted and caused

to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and
30 delivered in excess, was, by the corporation defendants and firms so selling and delivering the same, paid into a common fund, held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, compensated, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as sold and delivered less than the amounts so allotted to them respectively, so it was not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy that each of the said corporation defendants and of the said firms also paid into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment to be the absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm, in disposing of its said allotment in carrying on the said business, trade and commerce, on its part faithfully should exercise every reasonable effort and due business diligence to maintain the prices so fixed and caused to be fixed as aforesaid and pay into the said fund the sum accruing to the same on account of its said excess sales, in which case an equal amount was returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also made uniform and non-competitive as between all of the said corporation defendants and the said firms, in the said business, trade and commerce, among the said States of the conspiracy.

As a convenient intermediary and common agent between the said corporation defendants and the said firms, respectively and as a means of securing their co-operation in carrying out the said unlawful conspiracy, the said defendants made use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company, Limited, was also allowed and required to collect, hold, use and distribute the said fund
31 arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that, in pursuance of the said unlawful conspiracy,

and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of September, in the year nineteen hundred and three, during the period of time aforesaid, at and within the City of New York, in the State of New York, unlawfully did knowingly deposit with the Continental Trust Company, of the said City of New York, the sum of twenty-six thousand dollars, in connection with the purchase *of* by the said trust company on behalf of the said Virginia-Carolina Chemical Company, and in the name of one Montrose Stuart, a clerk in the office of the said trust company, of twenty-six hundred shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Samuel T. Morgan, on the seventh day of October, in the same year nineteen hundred and three, and during the period of time aforesaid, at and within the said city of New York, in the State of New York, unlawfully did deliver to the said William DeC. Kessler, Vice-President of the said Colonial Development Company, Limited, three checks drawn by the said Virginia-Carolina Chemical Company, one upon the National City Bank, of New York City aforesaid, for eighty thousand dollars, another on the Bank of America, of New York City aforesaid, for fifty thousand dollars, and the other on the National Park Bank, of New York City aforesaid, for thirty-five thousand and four hundred and sixty-eight dollars, aggregating one hundred and sixty-five thousand and four hundred and sixty-eight dollars, as and for a payment, by the said Virginia-Carolina Chemical Company, to the said Colonial Development Company, Limited, of twenty cents a ton on its allotment under the said unlawful conspiracy; he the said Samuel T. Morgan, when and where he so as aforesaid delivered the said checks to the said William DeC. Kessler, well knowing the character and purpose of the same, and well knowing that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as acts on their parts respectively of engaging in the same, the said Samuel T. Morgan,
32 Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, on the seventeenth day of September, in the year nineteen hundred and three, and during the period aforesaid, at the said City of New York, in the said State of New York, unlawfully did meet together to discuss and further the object of the said unlawful conspiracy; they the said Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred G. Brown,

Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, when and where they so as aforesaid met together, each well knowing the character and purpose of the said meeting, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank E. Wilcox, on the first day of November, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did deliver to one W. W. Perkins, Secretary of the said American Fertilizing Company, a certain document, too voluminous to be here set forth, stating certain prices and terms of sale, fixed in pursuance of the said unlawful conspiracy, for the said fetilizer merchandise, in the States of North Carolina, South Carolina, Georgia, Florida, Alabama and Tennessee, for the spring season of the year nineteen hundred and four; he the said Frank E. Wilcox at the time and place when and where he so as aforesaid delivered the said document to the said W. W. Perkins, well knowing the character of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, and during the period of time aforesaid, at the town of Decherd, in the said Middle District of Tennessee, by and through one
33 F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, and during the period aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, and during the period of time aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at the City of Nashville, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, a certain notice of shipment, partly written and partly printed, in the words and figures following, that is to say:

"The Armour Fertilizer Works
Owned and operated by
Armour & Company.
Prudential Building,
Atlanta, Ga.

Duplicate.
To be Mailed with Bill of
Lading to Customer.

No. 612
March 10", 1905.

34 We have this day shipped from Nashville, Tenn. storage
To Bramlitt Hdw Co.
Corinth, Miss.
Charge to S. D. Bramlitt. Address same.

No. Bags.	Weight of bags.	Brand.	Tons.
400	100	King Cotton 8.2.2	20

Order No. 4613.
Bill of lading herewith. Invoice will be mailed from Chicago.
Above quantities shipped 3 10 1905. Freight Terms.....
Car No. 13619. Via L. & N.
Charges prepaid $48.00.
THE ARMOUR FERTILIZER WORKS,
Per ALEX. LESLIE."

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Austin B. Carpenter, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Assistant Secretary of the said Colonial Development Company, unlawfully did sign his name, to wit, "A. B. Carpenter, Asst. Secy." on the face of a certain stock certificate, to wit, certificate No 28, showing the ownership by one Thomas M. Green of fifty-one shares of the capital stock of the said Colonial Development Company; he the said Austin B. Carpenter, at the time and
35 place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his said act to be done in pursuance and to effect the object of the said conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles H. MacDowell, on the twelfth day of January, in the year nineteen hundred and five, and during the period of time aforesaid, at and within the city of Chicago, in the State of Illinois, unlawfully did sign his name, to-wit, "C. H. MacDowell," under the name of the Armour Fertilizer Works, and after the word "by" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Armour and Company, under the trade name of "Armour Fertilizer Works," offered to furnish and deliver at Corinth, in the State of Mississippi to one S. D. Bramlitt, twenty tons of the fertilizer merchandise aforesaid; he the said Charles H. MacDowell, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of gaging in the same, the said Alabama Chemical Company, on the the first day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the city of Wilmington, in the State of North Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of six hundred and twenty

dollars for sixty-two shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Alabama Chemical Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Montgomery, in the State of Alabama, unlawfully did knowingly deliver its certain check drawn upon the Merchants and Planters-Farley National Bank, Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of William DeC. Kessler, as payment for forty-two shares of the capital stock of the said Colonial Development Company, Limited;

36 And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Anderson Phosphate and Oil Company, on the twenty-ninth day of August, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Anderson, in the State of South Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of five hundred and eighty dollars for fifty-eight shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly buy from the Carolina Savings Bank, Charleston, South Carolina, a draft upon the Citizens National Bank, of New York City, for the payment of the sum of seven thousand nine hundred and forty-nine dollars and forty-three cents to the order of one Frank E. Taylor, Vice-President and General Manager of the said Ashepoo Fertilizer Company;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and *and* during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly cause the said Frank E. Taylor to endorse the check last above mentioned payable to the order of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Blackshear Manufacturing Company, on the seventeenth day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Blackshear, in the State of Georgia, unlawfully did knowingly deliver to the Atlantic Coast Line Railroad Company six tons of the fertilizer merchandise aforesaid, consigned and to be shipped

to the firm of E. J. Blume & Company, at Live Oak, in the State of Florida;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Etiwan Fertilizer Company, on the fourteenth day of December, in the year nineteen hundred and
37 three, and during the period of time aforesaid, at and within the town of Cairo, in the State of Georgia, by and through one P. H. Seabrook, its agent, unlawfully did knowingly offer and agree to furnish and deliver to the firm of Wight Brothers, of Cairo aforesaid, thirty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank Burbidge, on the first day of July, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Charleston, in the State of South Carolina, having then and there in his hands a certain check, dated the thirtieth day of June, in the same year nineteen hundred and four, drawn by the said Alabama Chemical Company upon the Continental National Bank of Chicago, for the payment of eleven hundred and forty-two dollars and ninety-seven cents to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Pay to order of People's National Bank, Colonial Development Co., Ltd., F. Burbidge, Pres."; he the said Frank Burbidge then and there, to wit, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William J. McCormack, on the ninth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, having then and there in his hands a certain check dated the fifth day of September, in the same year, drawn by the said New Orleans Acid & Fertilizer Company, upon the Louisiana National Bank of New Orleans, for the payment of seven hundred and fifty dollars to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Colonial Developm't Co., Frank Burbidge, Sec. & Treas., per Wm. J. McCormack"; he the said William J. McCormack, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of en-

gaging in the same, the said Federal Chemical Company, of
38 Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the said State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four,
and during the period of time aforesaid, at Springfield afore-
39 said, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff & Williams, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Goulding Fertilizer Company, Limited, on the twenty-fifth day of November, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the

town of Cullman, in the State of Alabama, by and through one W. E. Craig, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one John Sutterer, at Cullman aforesaid, three hundred and seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the sixth day of September, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Pensacola, in the State of Florida, having then and there in his hands a certain check, dated the fifth day of September, in the same year nineteen hundred and three, drawn by the said Alabama Chemical Company upon Merchandise Merchants and Planters-Farley National Bank of Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of W. DeC. Kessler, unlawfully did sign his name, to wit, "W. DeC. Kessler," upon the back of the said check next below the written words "Pay to the order of Colonial Development Co."; he the said William DeC. Kessler then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the back of the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the said fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Vice-President of the said Colonial Development Company, unlawfully did sign his name, to wit, "W. DeC. Kessler, V. P." on the face of the said stock certificate in the name of Thomas M. Green; he the said William DeC. Kessler, at the time and place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his act to be done in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Gulfport Cotton Oil Fertilizer and Manufacturing Company, on the twenty-seventh day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-four hundred dollars for and in respect of twelve thousand tons of the fertilizer merchandise aforesaid, allotted to the said Gulfport Cotton Oil, Fertilizer and Manufacturing Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Home Mixture Guano Company, on a day in the year nineteen hundred and three to the said grand jurors

unknown, and during the period of time aforesaid, at and within the City of Columbus, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Jackson Fertilizer Company, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Jackson, in the State of Mississippi, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Marietta Fertilizer Company, on the twenty-first day of July, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by and through one L. W. Reeves, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one James A. Boyd, at Jonesboro aforesaid, seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said James G. Tinsley, on the
41 third day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Nashville, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley; he the said James G. Tinsley, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Meridian Fertilizer Factory, on the seventh day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Cullman, in the State of Alabama, by its agent E. L. Robbins, unlawfully did knowingly offer to furnish to C. A. Steifelmeyer one hundred and fifty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said National Fertilizer Company, on the

second day of March, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge; he the said William D. Rhea, then
42 and there, to wit, at the time and place when and where he so directed and required the said E. W. Connell to sign his name as aforesaid to the said check, well knowing the nature and contents of the said check, and that his said direction and requirement were in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid; he the said William D. Rhea then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the said document, well knowing the character of the same, and well knowing his said act to be one done in pursuance of and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said New Orleans Acid & Fertilizer Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did

knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars for seventy-five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Old Dominion Guano Company, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-six hundred and twenty dollars, for and
43 in respect of thirteen thousand one hundred tons of the fertilizer merchandise aforesaid, allotted to the said Old Dominion Guano Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William L. Peel, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did sign his name, to wit, "W. L. Peel, Prest.," to a certain check, to wit, a check drawn by the Maddox-Rucker Banking Company upon the National Park Bank, New York, for the payment of twenty-six hundred and twenty dollars to the order of the said Colonial Development Company, Limited; he the said William L. Peel, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Planters Chemical Company, on the thirtieth day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Talladega, in the State of Alabama, unlawfully did knowingly pay the said Colonial Development Company, Limited, the sum of fifty dollars for five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Read Phosphate Company, on the fifth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Hartselle, in the State of Alabama, unlawfully did knowingly offer to sell and deliver to one S. E. Stewart, at that place, forty to fifty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and

three, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too
44 voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid; he the said Abram C. Read, then and there, to wit, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved, Nashville Tenn. Dec. 6 1904," and above the word "Manager," upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof, offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid; he the said Abram C. Read then and there, to wit, at the time and place when and where he so as aforesaid signed his name to the last mentioned document, well knowing the character and contents of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said F. S. Royster Guano Company, on the thirtieth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine thousand three hundred and fourteen dollars and seventy-four cents, on account of such merchandise sold and delivered by the said F. S. Royster Guano Company in excess of its allotment under the aforesaid unlawful conspiracy;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles F. Burroughs, on the twenty-fifth day of March, in the year nineteen hundred and four,
45 and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did sign

his name, to wit, "C. F. Burroughs," under the word "countersigned" and above the words "Vice-President" upon the face of a certain document, partly written and partly printed, too voluminous to be here set forth in full, wherein and whereby the said F. S. Royster Guano Company and he the said Charles F. Burroughs, as Vice-President thereof, offered to sell to one J. W. Carter, and to deliver to him at Maxton, in the State of North Carolina, ten tons of the fertilizer merchandise aforesaid; he the said Charles F. Burroughs, at the time and place when and where he so as aforesaid signed his name to the said document, well knowing the character and contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Savannah Guano Company, on the second day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did knowingly pay to the said Frank Burbidge the sum of nine hundred and forty dollars for ninety-four shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said A. J. Ives, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did sign his name, to wit, "A. J. Ives, Secty. & Treas." to a certain check, to wit, a check drawn by the Savannah Guano Company upon the Merchants National Bank, Savannah, Georgia, for the payment of three thousand one hundred and forty dollars to the order of New York Exchange; he the said A. J. Ives, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Southern States Phosphate and Fertilizer Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of the time afore-
46 said, at and within the City of Augusta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine hundred and sixty dollars for ninety-six shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Chemical and Oil Company, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the

town of Troy, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand dollars for and in respect of one-half of forty thousand tons of the fertilizer merchandise aforesaid allotted to the said Standard Chemical and Oil Company, as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Guano and Chemical Manufacturing Company, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand seven hundred and seventy-four dollars and seventy-seven cents as a partial payment for and in respect of the fertilizer merchandise aforesaid, allotted to the said Standard Guano and Chemical Manufacturing Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Swift & Company, on the first day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by its agent, J. Z. Elliott, unlawfully did knowingly offer to furnish to one W. P. Diehl thirty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

47 And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes & Bro., at Oxford, Alabama, a certain letter of the tenor following, to wit:

T. G. Tinsley, Pres't & Treas. Allen Hardison, Sec'y.

Tennessee Chemical Company, Manufacturers and Importers of Ox Fertilizers.

NASHVILLE, TENN., *May* 17–'05.

Messrs. D. P. Haynes & Bro., Oxford, Ala.

DEAR SIRS: I am in receipt of your favor of the 16th and beg to state we could not allow any discount further than the 5 % for cash

settlement. We will be glad to have you settle in cash on this basis if you desire to do so, but are sorry to state we are not in a position to offer you any further discount.

Yours truly, T. G. TINSLEY, *President;*

he the said T. Garland Tinsley then and there, to wit, at the time and place when and where he so as aforesaid caused the said letter to be written and sent as aforesaid, well knowing that the same was so written and sent in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part in engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Company, James G. Tinsley. By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee
48 Chemical Company upon the Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley; he the said T. Garland Tinsley, at the same time and place when and where he so as aforesaid wrote the said endorsement on the back of the said check, well knowing the contents of the same, and that his said act was done in pursuance of and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Valley Fertilizer Company, on the second day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Florence, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars, as a partial payment for and in respect of fertilizer merchandise, aforesaid, allotted to the said Tennessee Valley Fertilizer Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on their parts respectively, of engaging in the same, the said Frank Burbidge, Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson, during the period of time aforesaid, at the City of New York, in the State of New York, the City of Washington, in the District of Columbia, Old Point Comfort and Hot Springs, in the State of Virginia, St. Augustine, in the State of Florida, and French Lick Springs, in the State of Indiana, unlawfully did as officers, directors and attorney of the said Colonial Development Company, Limited,

meet together for the purpose of discussing and attending to the affairs of the said Colonial Development Company, Limited; they the said Frank Burbidge, Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson when and where they so met together aforesaid, well knowing the purpose of such meetings, and well knowing their acts in the premises to be acts in pursuance and to effect the object of the said unlawful conspiracy, and that the same were done as acts on their parts respectively of engaging in the said unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, during the period of time aforesaid, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form aforesaid, unlawfully did engage in a conspiracy in
49 restraint of trade and commerce among the several States;

Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

Second Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the first count described, and were so engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord, nineteen hundred and three at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the grand jurors unknown, and engage in a conspiracy, among themselves and with such other unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid; which said unlawful conspiracy in this count mentioned then and there was a conspiracy for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described; that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the

said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing and causing to be fixed, uniform and non-competitive prices, by them to be styled "current, reasonable market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such times prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum ther-of during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be the absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its excess

sales, in which case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of pay-
51 ment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their cooperation in carrying out the said unlawful conspiracy, the said defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, and as being acts on the part of the said corporation and individual defendants respectively of engaging in that conspiracy, are now here in this count charged to be acts by the same corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned, and to have been acts on the part of the said corporation and individual defendants respectively of engaging in the last-named unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a con-
52 spiracy in restraint of trade and commerce among the several States; against the peace and dignity of the said United

States, and contrary to the form of the statute of the same in such case made and provided.

THIRD COUNT.

And the grand jurors, aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the said first count described, and so were engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the said United States, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the said United States, to wit, the offense of engaging in a combination, among themselves and with such other unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid, which said unlawful conspiracy in this count mentioned then and there was a conspiracy to engage in a combination for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described, that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and com-
53 merce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them to be styled "current, reasonable market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be

prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such times prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful combination and ninety per centum thereof during the second year; it being a further element of the said unlawful combination in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on the said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the
54 same on account of its excess sales, in which case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their cooperation in carrying out the said unlawful combination, the said defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and

the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful combination; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, are now here in this count charged to be acts by the said corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy to commit an offense against the said United States: Against
55 the peace and dignity of the said United States; Against the peace and dignity of the said United States, and contrary to the form of the statute in such case made and provided.

Fourth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names

and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State, but by way of and partly through another State, and were severally engaged both in local com-
56 merce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the aforesaid business and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section one of the said Act of Congress, approved July 2, 1890, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, The Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company of Delaware, the Federal Chemical

Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count,
57 to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly engage in a conspiracy in restraint of commerce among the several States, to wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, whereby the said commerce was restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise which were maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the period of such unlawful conspiracy, and greatly in excess of those prices which would have otherwise prevailed in the said States during the period of such unlawful conspiracy, and were therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby earnest money was given to secure the maintenance of such prices and compensation was made to those losing volume of business by reason of maintaining such prices, that is to say:

There was from time to time allotted to each of said corporation defendants and firms an amount of tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms paid into a common fund the sum

of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sums becoming due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which faithfully maintained such uniform and non-competitive prices and failed to make sales
58 and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but sold and delivered through itself and its subsidiary companies a minimum amount thereof required as a guarantee of good faith, received from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid fell short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies made such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, as a penalty upon such excess sales, paid into such common fund like amounts per ton on the said respective kinds of fertilizers, divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means whereby said unlawful conspiracy was effected, a corporation of Ontario, Canada, whose stock was apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was the common fund aforesaid into which was paid the earnest money and penalties on excess sales aforesaid, and from which was paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which the same was operated and directed.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that within the period aforesaid of said unlawful conspiracy in this count of this indictment mentioned, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and did do and perform such acts as acts on their respective parts of engaging in the said unlawful conspiracy in this count of this indictment mentioned, and that each of such defendants at the time and place when and where such defendants did and performed the acts hereinafter so set forth in connection with such defendant respectively, then

and there well knew the character of such act and that such
59 act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, and as an act on the part of such defendant in engaging in the same, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year, nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the
60 tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chatta-
61 nooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the

County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit,
62 "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Ten-

nessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec. 6 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abraham C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P.
63 Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said corporation and individual defendants, during the period of time aforesaid, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

Fifth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the

first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and
64 through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the several States of the conspiracy and the said States of Virginia, Illinois and Kentucy, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commence against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, approved July 2, 1890, the said corporation defendants named in the said first count, to wit, the Virginia-Caro-
65 lina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, and engage in a conspiracy among themselves and with such other unknown corporations and persons, in restraint of commerce among the several States, to-wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, by which unlawful conspiracy said commerce was to be restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the

various points of delivery in the said States of the conspiracy,
66 which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy, and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices, that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to make sales and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose
67 treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary and

common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful conspiracy was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that such act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

68 In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one

Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said consiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company,
69 on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the seventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Ten-

nessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle
70 District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his, the said E. W. Connell's name as such Treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fer-

tilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read,"
after the words "Approved—Nashville, Tenn., Dec. 6 1904"
71 and above the word "Manager" upon the face of a certain
other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he, the said Abram C. Read as Manager thereof offer-d to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee

Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

72 SIXTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were

severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress approved July 2, 1890, and entitled "An Act to protect
73 trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and in the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section 5440 of the Revised Statutes of the United States, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William
74 J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Wil-

liam D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the United States, to wit, to engage in a combination in restraint of commerce among the several States, namely, a combination in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, and did then and there so conspire to commit the aforesaid offense by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy, and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices; that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to
75 make sales and deliveries of such merchandise through itself and its subsidiary — amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment,

as aforesaid; and on the other hand, each of said corporation defendants and firms which, through itself and its subsidiary companies, should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful combination was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid, the corporation defendants and individual defendants, hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that such act was done in pur-
76 suance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and

four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at West
77 Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid,

consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchan-
78 dise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Arndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day

and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D.
79 Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec. 6 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes

and Bro.," at Oxford, Alabama, that certain letter of the date
80 set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley, By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did conspire to commit an offense against the United States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

ABRAM M. TILLMAN,
United States Attorney.

(Endorsed as follows:) No. 963. United States Circuit Court, Middle District of Tennessee. The United States *vs.* Virginia-Carolina Chemical Company *et als.*

Indictment for violating Act of Congress approved July 2, 1890, and entitled "An Act to Protect Trade and Commerce against unlawful restraints and monopolies," and Section 5440 R. S. U. S.

A True Bill. Robert Q. Stewart, Foreman of the Grand Jury.

Names of Witnesses Sworn and Examined Before the Grand Jury.

J. C. Adams, Henry E. Ahern, Lee Ashcraft, Eugene Atkinson, N. E. Barker, W. F. Barrett, James C. Beck, J. M. Berry, W. W. Bird, L. W. Botts, Clarence Braden, S. D. Bramlitt, A. P. Brantley,
B. D. Brantley, Dewitt Brown, H. C. Brown, Arthur Bussey,
81 Hezekiah Bussey, E. J. Blume, James A. Boyd, William F. Burns, Oscar Bright, J. W. Carter, B. G. Clark, C. W. Comes, E. W. Connell, Charles Earle Currie, R. L. Davis, Joseph Denee, W. P. Diehl, A. M. Dobbs, John V. Dobson, C. H. Drayton, W. L. Dumas, J. B. Duncan, S. Eastland, T. B. Edwards, Culpepper Exum, H. C. Fischer, J. B. Fiser, Albert French, C. A. Gambrill, A. H. George, John E. Gibbs, William Gilchrist, James M. Goldsmith, A. A. Green, E. P. Grice, W. A. Hansel, G. A. Harrington, H. J. Harby, Allen Hardison, L. C. Hayne, J. L. Haynes, D. P. Haynes, R. W. Henderson, P. W. Hendricks, E. R. Hodgson, junior, E. R. Hodgson, senior, J. L. Horn, W. E. Hudson, T. J. Hunt, R. H. John-

ston, T. V. Kessler, E. M. Kirk, Henry Kirn, H. L. Law, Alexander Leslie, J. A. Lindsey, W. Hampton Logan, Harry Luck, John A. Lewis, W. F. McKenzie, Robert F. Maddox, H. W. Malloy, E. R. Manning, H. L. Milligan, J. Allen Moore, M. B. Neece, W. J. Oliver, E. Thomas Orgain, D. B. Osborne, Every M. Paget, W. W. Perkins, Dr. J. D. Plunkett, F. B. Pope, William Price, Charles Rainey, Frederick Rayfield, Isaac W. Read, W. A. Reynolds, I. T. Rhea, W. E. Richards, H. A. Rogers, V. N. Roadstrum, W. G. Sadler, G. W. Sanders, E. M. Sentelle, W. McR. Smith, R. G. Sparrow, J. F. Stackley, C. A. Steifelmeyer, S. E. Stewart, W. B. Stratford, John Sutterer, E. R. Taber, Frank E. Taylor, W. B. Taylor, W. D. Tharin, J. R. Timmerman, J. W. Todd, S. W. Travers, George H. Tucker, E. Van Winkle, J. T. Welch, O. C. Wiley, C. H. Willcox, T. B. Williams, Benjamin L. Willingham, W. S. Wight, E. G. Woodling.

Filed 11:30 A. M., May 25, 1906. H. M. Doak, Clerk, by E. L. Doak, Deputy Clerk. Abram M. Tillman, U. S. Atty.

I, H. M. Doak, Clerk of the Circuit Court of the United States in and for the Middle District of Tennessee, hereby certify that the foregoing is a true, perfect, and complete copy of an indictment filed as thereupon endorsed, etc. In witness whereof I have hereunto signed my name and affixed the seal of said court, at my office, this the 26th day of May, 1906.

[SEAL OF COURT.] H. M. DOAK, *Clerk.*

82 *Order Awarding Writs of Habeas Corpus and Certiorari.*

Filed July 14th, 1906.

In the Matter of the Petition of AUSTIN B. CARPENTER for Writs of *Habeas Corpus* and Certiorari.

AUSTIN B. CARPENTER, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

Let the writ of *habeas corpus*, in due form of law, as prayed for in the within petition be issued directed to Morgan Treat, United States Marshal for the Eastern District of Virginia, commanding him forthwith to make return of said writ and to produce the body of said petitioner, Austin B. Carpenter, before this Court, to be dealt with according to law; and that the writ of certiorari as prayed for in said petition be issued and made returnable forthwith.

Richmond, Va., July 14th, 1906.

NATHAN GOFF,
Presiding Circuit Judge, April Term, 1906.

Writ of Habeas Corpus.

83 UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

To Morgan Treat, United States Marshal for the Eastern District of Virginia, or any of his deputies:

We command you that the body of Austin B. Carpenter in your custody detained, as it is said, together with the day and cause of his caption and detention, you safely have before our Circuit Court of the United States, within and for the District aforesaid, forthwith, to do and receive all and singular those things which the said Circuit Court of the United States, within and for the District aforesaid, shall then and there consider of him in this behalf; and have you then and there this writ.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond, this 14th day of July, in the year of our Lord one thousand nine hundred and six, and of our Independence the 131st year.

[Seal United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Marshal's Return.

To the Circuit Court of the United States for the Eastern District of Virginia:

Morgan Treat, United States Marshal for the said Eastern District of Virginia, to whom the annexed writ is directed, has now before the court the body of Austin B. Carpenter therein named, as thereby commanded. And I certify that the cause of the detention of the said Austin B. Carpenter is a warrant directed to me and issued by the Honorable Edmund Waddill, Jr., Judge, of the said Eastern
84 District of Virginia, on July 14th, 1906, under the provisions of section 1014 of the Revised Statutes of the United States, commanding the imprisonment and removal of the said Austin B. Carpenter to the Middle District of Tennessee for trial in the Circuit Court of the United States for said last mentioned district upon a certain indictment found in said last mentioned court against him, the said Austin B. Carpenter and others, a copy of which warrant of removal is set out in the petition of the said Austin B. Carpenter herein; and that a full, true and correct statement of all the proceedings before the said Judge upon the application for the arrest and commitment of the said Austin B. Carpenter and his removal to said Middle District of Tennessee for trial is contained and set forth in the statement or order of said Judge, a copy of which is set forth in section 7 of the said Austin B. Carpenter's petition and in the documents made a part thereof and therein referred to.

MORGAN TREAT,
U. S. Marshal for the Eastern District of Virginia.

Dated this 14th day of July, A. D. 1906.

Writ of Certiorari.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

The President of the United States of America to the Judge of the District Court of the United States for the Eastern District of Virginia:

85 We being informed that there is now pending before you a suit in which the United States of America is plaintiff and Austin B. Carpenter is defendant; and we being willing, for certain reasons, that the said case and the record and proceedings therein should be certified by the Judge of the District Court of the United States for the Eastern District of Virginia and removed into the Circuit Court of the United States for the Eastern District of Virginia, sitting at Richmond, Virginia;

We do hereby command you forthwith that you send forthwith to the said Circuit Court of the United States for the Eastern District of Virginia, as aforesaid, the record and proceedings in said case, so that the said Circuit Court of the United States for the Eastern District of Virginia may act thereon as of right and according to law ought to be done.

Witness, The Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond, this 14th day of July, in the year of our Lord one thousand nine hundred and six, and of our Independence the 131st year.

[Seal United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Return of United States District Judge.

The Clerk of the United States District Court is hereby directed to deliver to the Judges of the United States Circuit Court within and for the Eastern District of Virginia the record and proceedings mentioned in the within writ.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

Richmond, Va., July 14", 1906.

86 *Transcript of Proceedings Before Honorable Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia.*

The following proceedings were had before Honorable Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia, at Richmond, Virginia, on the 14th day of July, 1906.

THE UNITED STATES
versus
AUSTIN B. CARPENTER.

Writ of Certiorari.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

The President of the United States of America to the Judge of the District Court of the United States for the Eastern District of Virginia:

We being informed that there is now pending before you a suit in which the United States of America is plaintiff and Austin B. Carpenter is defendant; and we being willing, for certain rea-
87 sons, that the said case and the record and proceedings therein should be certified by the Judge of the District Court of the United States for the Eastern District of Virginia and removed into the Circuit Court of the United States for the Eastern District of Virginia, sitting at Richmond, Virginia.

We do hereby command you forthwith that you send forthwith to the said Circuit Court of the United States for the Eastern District of Virginia, as aforesaid, the record and proceedings in said case, so that the said Circuit Court of the United States for the Eastern District of Virginia may act thereon as of right and according to law ought to be done.

Witness, The Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond, this 14th day of July, in the year of our Lord one thousand nine hundred and six, and of our Independence the 131st year.

[Seal of United States Circuit Court.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Return of United States District Judge.

The Clerk of the United States District Court is hereby directed to deliver to the Judges of the United States Circuit Court within and for the Eastern District of Virginia the record and proceedings mentioned in the within writ.

EDMUND WADDILL, JR.,
U. S. District Judge.

Richmond, Va., July 14th, 1906.

88 *Complaint.*

Filed July 14th, 1906.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

On this 14th day of July, A. D. 1906, at the City of Richmond, in the said District, before the Hon. Edmund Waddill, Jr., Judge of the District Court of the United States of America for the said

District, comes Morgan Treat, United States Marshal in and for the said District, and upon his oath complains and says: that he has good cause to believe and does firmly believe that Austin B. Carpenter stands indicted by the Grand July of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said Austin B. Carpenter on the eighth day of July in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, being during said period Manager and Agent of the Armour and Company, a corporation existing under and by the laws of the State of Illinois, did in the said Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said Austin B. Carpenter did unlawfully conspire with divers other persons
89 and corporations to commit an offense against the United States, to-wit, the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States, all as more fully set out in an indictment filed in the said Circuit Court of the United States in and for the Middle District of Tennessee on May 25, 1906, in cause No. 963, entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," a certified copy of which indictment is hereto attached and made a part of this complaint; and complainant therefore charges that the said Austin B. Carpenter did commit the said offenses against the United States in manner and form as set forth in said indictment.

Complainant furthermore avers upon information and belief that said Austin B. Carpenter is now believed to be within the Eastern District of Virginia.

Wherefore this complainant prays that the said Austin B. Carpenter may be arrested and imprisoned and removed or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee, and further dealt with according to law.

MORGAN TREAT, *Marshal.*

Subscribed and sworn to before me by the above named Morgan Treat the day and year first above written.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

Richmond, Va., July 14, 1906.

90 *Certified Copy of Indictment.*

In the Circuit Court of the United States of America for the Middle District of Tennessee, of the April Term, in the Year of Our Lord Nineteen Hundred and Six.

MIDDLE DISTRICT OF TENNESSEE, *sct:*

The grand jurors for the United States of America, inquiring for the Middle District of Tennessee, upon their oath present, that before and on the eighth day of July, in the year of our Lord nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year of our Lord nineteen hundred and five, the following named corporations, respectively organized and existing under and authorized by the laws of the several States and of the foreign country here named in connection with them, and hereafter in this indictment called corporation defendants, to wit, the Virginia-Carolina Chemical Company, of New Jersey, Armour and Company, of Illinois, the Acme Manufacturing Company, of North Carolina, the Alabama Chemical Company, of New Jersey, the Anderson Phosphate & Oil Company, of South Carolina, the Ashepoo Fertilizer Company, of South Carolina, the Blackshear Manufacturing Company, of Georgia, the Etiwan Fertilizer Company, of South Carolina, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, The Furman Farm Improvement Company, of Georgia, the Goulding Fertilizer Company, Limited, of Great Britain and Ireland, The Goulding Fertilizer Company, of Florida, the Gulfport Cotton Oil, Fertilizer & Manufacturing Company, of Georgia, the Home Mixture Guano Company, of Georgia, the Jackson Fertilizer Company, of Mississippi, the Marietta Fertilizer Company, of Georgia, the Meridian Fertilizer Factory, of Mississippi, the National Fertilizer Company, of Tennessee, the New Orleans Acid and Fertilizer Company, of New Jersey, the Old Dominion Guano Company, of Georgia, the Planters Chemical Company, of Alabama, the Read Phosphate Com-
91 pany, of West Virginia, the F. S. Royster Guano Company, of Virginia, the Savannah Guano Company, of Georgia, the Southern States Phosphate and Fertilizer Company, of Georgia, the Standard Chemical & Oil Company, of Alabama, the Standard Guano and Chemical Manufacturing Company, of Louisiana, Swift & Company, of Illinois, the Tennessee Chemical Company, of Tennessee, and the Tennessee Valley Fertilizer Company, of Alabama, and certain firms, to wit, the firm of A. D. Adair and McCarty Brothers and the firm of Wilcox, Ives & Company, did carry on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereafter in this indictment called the States of the conspiracy, as wholesale dealers in complete and alkaline fertilizers and in acid phosphates, nitrates, and potash salts suitable for fertilizers, which then were useful and valuable articles of merchandise, indispensable for use on the soil of the said States of the conspiracy in order that the staple

crops of those States might be raised therefrom; that the following named persons, hereafter in this indictment called individual defendants, to wit, Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, of the said Virginia-Carolina Chemical Company, and J. Rice Smith, agent and manager of the said Virginia-Carolina Chemical Company, and president of the Georgia Chemical Works hereinafter mentioned, Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, Fred G. Brown, president and treasurer of the said Anderson Phosphate & Oil Company, Frank Burbidge, president, and William J. McCormack, treasurer of the said Etiwan Fertilizer Company, George Braden, president of the said Federal Chemical Company, of Delaware, and also of the said Federal Chemical Company, of Kentucky, Augustus D. Adair and James D. McCarty, officers and agents of the said Furman Farm Improvement Company and members of the said firm of A. D. Adair and McCarty Brothers, William DeC. Kessler, secretary and treasurer of the said Goulding Fertilizer Company, Limited, James G. Tinsley, president of the said Marietta Fertilizer Company and vice-president of the said Tennessee Chemical Company, William D. Rhea, general manager of the said National Fertilizer Company, William L. Peel, president of the said Old Dominion Guano Company, Abram C. Read, vice-president and general manager, and Isaac Mayo Read, agent, of the said Read Phosphate Company, Frank S. Royster, president, and Charles F. Burroughs, vice-
92 president, of the said F. S. Royster Guano Company, A. J. Ives, whose Christian name is to the said grand jurors unknown, secretary and treasurer of the said Savannah Guano Company and a member of the said firm of Wilcox, Ives & Company, T. Porter Fleming, vice-president of the said Southern States Phosphate and Fertilizer Company, and T. Garland Tinsley, president and treasurer of the said Tennessee Chemical Company, in their said several capacities as officers, managers, agents, and attorneys of the said corporation defendants and members of the said firms, and on behalf of those corporations and firms, during the period of time in this indictment first aforesaid, did carry on the business aforesaid; that in so carrying on the said business the said defendants, that is to say, the said corporation and individual defendants, did sell and deliver large quantities of the said merchandise within the limits of the said States of the conspiracy from the respective places of business of the said corporation defendants and the said firms, located at different points within those States, to retail dealers in and consumers of such merchandise, in such States respectively, and did also ship large quan-ties of the same from their respective places of business, located in the said States of the conspiracy and also in the States of Virginia, Illinois, and Kentucky, into and through other of the said States than those in which their said places of business were located; that in so carrying on the said business and shipping the said merchandise from one of the said States into and through another or others thereof, the said defendants, during the period

aforesaid, were engaged in trade and commerce among the States of this Union within the meaning of the Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in so carrying on the said business, trade and commerce, the said Virginia-Carolina Chemical Company and the said Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, and J. Rice Smith, agent and manager, of the said Virginia-Carolina Chemical Company, did make use of and operate a portion of their said business, trade and commerce through each of certain other corporations, to wit, the American Fertilizing Company, of Virginia, the Birmingham Fertilizer Company, of Alabama, the Coweta Fertilizer Company of Georgia, the Georgia Chemical Works, of Georgia, the Navassa Guano Company, of North Carolina, of either the whole or a majority of the capital stock of which said corporations respect-
93 ively the said Virginia-Carolina Chemical Company was the owner; that in so carrying on the said business, trade and commerce, the said Armour and Company and the said Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, did make use of and operate all of their said business, trade and commerce through a certain other corporation called the Tuscarora Fertilizer Company, of New Jersey, and a certain trade name, to wit, the trade name of Armour Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Furman Farm Improvement Company and the said firm of A. D. Adair and McCarty Brothers did make use of and operate a portion of their said business trade, and commerce under the trade name of Chickamauga Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Federal Chemical Company, of Delaware, and the said Federal Chemical Company of Kentucky, did make use of, and operate a portion of their said business, trade and commerce through, the names of Century Phosphate Company, Fox Chemical Company, Branch, Globe Fertilizer Company, Branch, and Tennessee Phosphate Company; that in so carrying on the said business, trade and commerce, the said National Fertilizer Company did make use of, and operate a portion of its said business, trade and commerce through, the corporate name of American Guano Company and the trade name of Nashville Guano Company; that in so carrying on the said business, trade and commerce, the said Read Phosphate Company did make use of, and operate a portion of its said business, trade and commerce through the corporate name of Empire Guano Company; that in so carrying on the said business, trade and commerce, the said F. S. Royster Guano Company did make use of, and operate a portion of its said business, trade and commerce through the trade name of Atlantic Chemical Company and the corporate name of Columbia Guano Company; that in so carrying on the said business, trade and commerce, the said Swift and Company did make

use of, and operate the whole of its said business, trade and commerce through, the trade name of Swift Fertilizer Works; and that in so carrying on the said business, trade and commerce, the said Tennessee Chemical Company did make use of, and operate a portion of its said business, trade and commerce through, the trade name of Continental Fertilizer Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that of the total volume of such business, trade and commerce then so being carried on by the said defendants and their competitors, the said defendants together had and controlled
94 the principal part, that is to say, ninety per centum thereof; and that because the said corporation defendants and the said firms were in fact separate and distinct from each other, they should have conducted their interstate trade and commerce strictly in competition with each other, during the said period, and then would have so conducted the same but for the unlawful conspiracy in restraint of the said business, trade and commerce in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, at and within the said Middle District of Tennessee, in violation of the provisions of said section one of the said Act of Congress, unlawfully did knowingly engage in a conspiracy in restraint of the said business, trade and commerce, so then being carried on by them in the manner aforesaid, whereby the said business, trade and commerce was restrained in the several ways and by the several means now here set forth and described, that is to say:

Competition as to the prices at which the said merchandise was sold and delivered by the said corporation defendants and the said firms in the said States of the conspiracy, which before the period of time in this indictment first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was prevented and destroyed by the said defendant from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them styled "current, reasonable market prices," for the said merchandise so sold and delivered by the said corporation defendants and the said firms in those States, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so fixed and caused to be fixed; which said uniform and non-competitive prices were prices greatly in excess of the prices which but for the said unlawful conspiracy would at such times have prevailed for the said merchandise in the said business, trade and commerce, and were prices therefore unreasonable, and were a tax on the people of the said States of the said conspiracy amounting to a large sum of money, to wit, four million dollars, annually during the continuance of the same.

For and on account of such quantity of the said merchandise as was sold and delivered as aforesaid by any of such corporation de-

fendants or of such firms, in excess of amounts allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and de-
95 livered in excess, was, by the corporation defendants and firms so selling and delivering the same, paid into a common fund, held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, compensated, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as sold and delivered less than the amounts so allotted to them respectively, so it was not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy that each of the said corporation defendants and of the said firms also paid into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be the absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm, in disposing of its said allotment in carrying on the said business, trade and commerce, on its part faithfully should exercise every reasonable effort and due business diligence to maintain the prices so fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its said excess sales, in which case an equal amount was returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also made uniform and non-competitive as between all of the said corporation defendants and the said firms, in the said business, trade and commerce, among the said States of the conspiracy.

As a convenient intermediary and common agent between the said corporation defendants and the said firms, respectively and as a means of securing their co-operation in carrying out the said unlawful conspiracy, the said defendants made use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company, Limited, was also allowed and required to collect, hold, use and distribute the said fund aris-
96 ing from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of September, in the year nineteen hundred and three, during the period of time aforesaid, at and within the City of New York, in the State of New York, unlawfully did knowingly, deposit with the Continental Trust Company, of the said City of New York, the sum of twenty-six thousand dollars, in connection with the purchase of by the said trust company on behalf of the said Virginia-Carolina Chemical Company, and in the name of one Montrose Stuart, a clerk in the office of the said trust company, of twenty-six hundred shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Samuel T. Morgan, on the seventh day of October, in the same year nineteen hundred and three, and during the period of time aforesaid, at and within the said city of New York, in the State of New York, unlawfully did deliver to the said William DeC. Kessler, Vice-President of the said Colonial Development Company, Limited, three checks drawn by the said Virginia-Carolina Chemical Company, one upon the National City Bank, of New York City aforesaid, for eighty thousand dollars, another on the Bank of America, of New York City aforesaid, for fifty thousand dollars, and the other on the National Park Bank, of New York City aforesaid, for thirty-five thousand and four hundred and sixty-eight dollars, aggregating one hundred and sixty-five thousand and four hundred and sixty-eight dollars, as and for a payment, by the said Virginia-Carolina Chemical Company, to the said Colonial Development Company, Limited, of twenty cents a ton on its allotment under the said unlawful conspiracy; he the said Samuel T. Morgan, when and where he so as aforesaid delivered the said checks to the said William DeC. Kessler, well knowing the character and purpose of the same, and well knowing that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as acts on their parts respectively of engaging in the same, the said Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox,
97 J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, on the seventeenth day of September, in the year nineteen hundred and three, and during the period aforesaid, at the said City of New York, in the said State of New York, unlawfully did meet together to discuss and further the object of the said unlawful conspiracy; they the said Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy,

Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, when and where they so as aforesaid met together, each well knowing the character and purpose of the said meeting, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank E. Wilcox, on the first day of November, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did deliver to one W. W. Perkins, Secretary of the said American Fertilizing Company, a certain document, too voluminous to be here set forth, stating certain prices and terms of sale, fixed in pursuance of the said unlawful conspiracy, for the said fertilizer merchandise, in the States of North Carolina, South Carolina, Georgia, Florida, Alabama and Tennessee, for the spring season of the year nineteen hundred and four; he the said Frank E. Wilcox at the time and place when and where he so as aforesaid delivered the said document to the said W. W. Perkins, well knowing the character of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, and during the period of time aforesaid, at the town of Decherd, in the said Middle District of Tennessee, by and through one
98 F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, and during the period aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to

furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, and during the period of time aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at the City of Nashville, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, a certain notice of shipment, partly written and partly printed, in the words and figures following, that is to say:

"The Armour Fertilizer Works
Owned and operated by
Armour & Company.
Prudential Building,
Atlanta, Ga.

Duplicate.
To be Mailed with Bill of
Lading to Customer.

No. 612
March 10", 1905.

99 We have this day shipped from Nashville, Tenn. storage
To Bramlitt Hdw Co.
Corinth, Miss.
Charge to S. D. Bramlitt. Address same.

No. Bags.	Weight of bags.	Brand	Tons.
400	100	King Cotton 8.2.2	20

Order No. 4613.
Bill of lading herewith. Invoice will be mailed from Chicago.
Above quantities shipped 3 10 1905. Freight Terms.....
Car No. 13619. Via L. & N.
Charges prepaid $48.00.
THE ARMOUR FERTILIZER WORKS,
Per ALEX. LESLIE."

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the

said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Austin B. Carpenter, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Assistant Secretary of the said Colonial Development Company, unlawfully did sign his name, to wit, "A. B. Carpenter, Ass't Sec'y" on the face of a certain stock certificate, to wit, certificate No. 28, showing the ownership by one Thomas M. Green of fifty-one shares of the capital stock of the said Colonial Development Company; he the said Austin B. Carpenter, at the time and
100 place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his said act to be done in pursuance and to effect the object of the said conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles H. MacDowell, on the twelfth day of January, in the year nineteen hundred and five, and during the period of time aforesaid, at and within the city of Chicago, in the State of Illinois, unlawfully did sign his name, to-wit, "C. H. MacDowell," under the name of the Armour Fertilizer Works, and after the word "by" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Armour and Company, under the trade name of "Armour Fertilizer Works," offered to furnish and deliver at Corinth, in the State of Mississippi to one S. D. Bramlitt, twenty tons of the fertilizer merchandise aforesaid; he the said Charles H. MacDowell, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Acme Manufacturing Company, on the first day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the city of Wil-

mington, in the State of North Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of six hundred and twenty dollars for sixty-two shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Alabama Chemical Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Montgomery, in the State of Alabama, unlawfully did knowingly deliver its certain check drawn upon the Merchants and Planters-Farley National Bank, Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of William DeC. Kessler, as payment for forty-two shares of the capital stock of the said Colonial Development Company, Limited;

101 And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Anderson Phosphate and Oil Company, on the twenty-ninth day of August, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Anderson, in the State of South Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of five hundred and eighty dollars for fifty-eight shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly buy from the Carolina Savings Bank, Charleston, South Carolina, a draft upon the Citizens National Bank, of New York City, for the payment of the sum of seven thousand nine hundred and forty-nine dollars and forty-three cents to the order of one Frank E. Taylor, Vice-President and General Manager of the said Ashepoo Fertilizer Company;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and *and* during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly cause the said Frank E. Taylor to endorse the check last above mentioned payable to the order of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Blackshear Manufacturing Company, on the seventeenth day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Blackshear, in the State of Georgia, unlawfully did know-

ingly deliver to the Atlantic Coast Line Railroad Company six tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of E. J. Blume & Company, at Live Oak, in the State of Florida;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Etiwan Fertilizer Company, on the fourteenth day of December, in the year nineteen hundred
102 and three, and during the period of time aforesaid, at and within the town of Cairo, in the State of Georgia, by and through one P. H. Seabrook, its agent, unlawfully did knowingly offer and agree to furnish and deliver to the firm of Wight Brothers, of Cairo aforesaid, thirty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank Burbidge, on the first day of July, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Charleston, in the State of South Carolina, having then and there in his hands a certain check, dated the thirtieth day of June, in the same year nineteen hundred and four, drawn by the said Alabama Chemical Company upon the Continental National Bank of Chicago, for the payment of eleven hundred and forty-two dollars and ninety-seven cents to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Pay to order of People's National Bank, Colonial Development Co., Ltd., F. Burbidge, Pres."; he the said Frank Burbidge then and there, to wit, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William J. McCormack, on the ninth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, having then and there in his hands a certain check dated the fifth day of September, in the same year, drawn by the said New Orleans Acid & Fertilizer Company, upon the Louisiana National Bank of New Orleans, for the payment of seven hundred and fifty dollars to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Colonial Develop'm't Co., Frank Burbidge, Sec. & Treas., per Wm. J. McCormack"; he the said William J. McCormack, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy,

and to effect the object of the same, and as an act on its part of engaging in the same, the said Federal Chemical Company, of
103 Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the said State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, and during the period of time aforesaid, at Springfield afore-
104 said, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff & Williams, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Goulding Fertilizer Company, Limited, on the twenty-fifth day of November, in the year nineteen

hundred and three, and during the period of time aforesaid, at and within the town of Cullman, in the State of Alabama, by and through one W. E. Craig, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one John Sutterer, at Cullman aforesaid, three hundred and seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the sixth day of September, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Pensacola, in the State of Florida, having then and there in his hands a certain check, dated the fifth day of September, in the same year nineteen hundred and three, drawn by the said Alabama Chemical Company upon Merchandise Merchants and Planters-Farley National Bank of Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of W. DeC. Kessler, unlawfully did sign his name, to wit, "W. DeC. Kessler," upon the back of the said check next below the written words "Pay to the order of Colonial Development Co."; he the said William DeC. Kessler then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the back of the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the said fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Vice-President of the said Colonial Development Company, unlawfully did sign his name, to wit, "W. DeC. Kessler, V. P." on the face of the said stock certificate in the name of Thomas M. Green; he the said William DeC. Kessler, at the time and place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his act to be done in pursuance and to effect the object
105 of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Gulfport Cotton Oil Fertilizer and Manufacturing Company, on the twenty-seventh day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-four hundred dollars for and in respect of twelve thousand tons of the fertilizer merchandise aforesaid, allotted to the said Gulfport Cotton Oil, Fertilizer and Manufacturing Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy,

and to effect the object of the same, and as an act on its part of engaging in the same, the said Home Mixture Guano Company, on a day in the year nineteen hundred and three to the said grand jurors unknown, and during the period of time aforesaid, at and within the City of Columbus, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Jackson Fertilizer Company, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Jackson, in the State of Mississippi, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Marietta Fertilizer Company, on the twenty-first day of July, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by and through one L. W. Reeves, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one James A. Boyd, at Jonesboro aforesaid, seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said James G. Tinsley, on the third
106 day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Nashville, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley; he the said James G. Tinsley, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Meridian Fertilizer Factory, on the seventh day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Cullman, in the State of Alabama, by its agent E. L. Robbins, un-

lawfully did knowingly offer to furnish to C. A. Steifelmeyer one hundred and fifty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge; he the said
107 William D. Rhea, then and there, to wit, at the time and place when and where he so directed and required the said E. W. Connell to sign his name as aforesaid to the said check, well knowing the nature and contents of the said check, and that his said direction and requirement were in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid; he the said William D. Rhea then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the said document, well knowing the character of the same, and well knowing his said act to be one done in pursuance of and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said New Orleans Acid & Fertilizer Company, on

the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars for seventy-five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Old Dominion Guano Company, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-six hundred and twenty dollars, for and in respect of
108 thirteen thousand one hundred tons of the fertilizer merchandise aforesaid, allotted to the said Old Dominion Guano Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William L. Peel, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did sign his name, to wit, "W. L. Peel, Prest.," to a certain check, to wit, a check drawn by the Maddox-Rucker Banking Company upon the National Park Bank, New York, for the payment of twenty-six hundred and twenty dollars to the order of the said Colonial Development Company, Limited; he the said William L. Peel, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Planters Chemical Company, on the thirtieth day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Talladega, in the State of Alabama, unlawfully did knowingly pay the said Colonial Development Company, Limited, the sum of fifty dollars for five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Read Phosphate Company, on the fifth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Hartselle, in the State of Alabama, unlawfully did knowingly offer to sell and deliver to one S. E. Stewart, at that place, forty to fifty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of en-

gaging in the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here
109 set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid; he the said Abram C. Read, then and there, to wit, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved, Nashville, Tenn. Dec. 6, 1904," and above the word "Manager," upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof, offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid; he the said Abram C. Read then and there, to wit, at the time and place when and where he so as aforesaid signed his name to the last mentioned document, well knowing the character and contents of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said F. S. Royster Guano Company, on the thirtieth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine thousand three hundred and fourteen dollars and seventy-four cents, on account of such merchandise sold and delivered by the said F. S. Royster Guano Company in excess of its allotment under the aforesaid unlawful conspiracy;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles F. Burroughs, on the
110 twenty-fifth day of March, in the year nineteen hundred and four, and during the period of time aforesaid, at and within

the City of Norfolk, in the State of Virginia, unlawfully did sign his name, to wit, "C. F. Burroughs," under the word "countersigned" and above the words "Vice-President" upon the face of a certain document, partly written and partly printed, too voluminous to be here set forth in full, wherein and whereby the said F. S. Royster Guano Company and he the said Charles F. Burroughs, as Vice-President thereof, offered to sell to one J. W. Carter, and to deliver to him at Maxton, in the State of North Carolina, ten tons of the fertilizer merchandise aforesaid; he the said Charles F. Burroughs, at the time and place when and where he so as aforesaid signed his name to the said document, well knowing the character and contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Savannah Guano Company, on the second day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did knowingly pay to the said Frank Burbidge the sum of nine hundred and forty dollars for ninety-four shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said A. J. Ives, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did sign his name, to wit, "A. J. Ives, Secty. & Treas." to a certain check, to wit, a check drawn by the Savannah Guano Company upon the Merchants National Bank, Savannah, Georgia, for the payment of three thousand one hundred and forty dollars to the order of New York Exchange; he the said A. J. Ives, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further n pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Southern States Phosphate and Fertilizer Company, on the fifth day of September, in the year nineteen
111 hundred and three, and during the period of the time aforesaid, at and within the City of Augusta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine hundred and sixty dollars for ninety-six shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Chemical and Oil Company, on the third day of October, in the year nineteen hundred and three,

and during the period of time aforesaid, at and within the Town of Troy, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand dollars for and in respect of one-half of forty thousand tons of the fertilizer merchandise aforesaid allotted to the said Standard Chemical and Oil Company, as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Guano and Chemical Manufacturing Company, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand seven hundred and seventy-four dollars and seventy-seven cents as a partial payment for and in respect of the fertilizer merchandise aforesaid, allotted to the said Standard Guano and Chemical Manufacturing Company, as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Swift & Company, on the first day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by its agent, J. Z. Elliott, unlawfully did knowingly offer to furnish to one W. P. Diehl thirty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

And that, further in pursuance of the said unlawful con-
112 spiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes & Bro., at Oxford, Alabama, a certain letter of the tenor following, to wit:

T. G. Tinsley, Pres't & Treas. Allen Hardison, Sec'y.

Tennessee Chemical Company, Manufacturers and Importers of Ox Fertilizers.

NASHVILLE, TENNESSEE, *May* 17, '05.

Messrs. D. P. Haynes & Bro., Oxford, Ala.

DEAR SIRS:—I am in receipt of your favor of the 16th and beg to state we could not allow any discount further than the 5% for cash settlement. We will be glad to have you settle in cash on this basis if you desire to do so, but are sorry to state we are not in a position to offer you any further discount.

Yours truly, T. G. TINSLEY, *President;*

he the said T. Garland Tinsley then and there, to wit, at the time and place when and where he so as aforesaid caused the said letter to be written and sent as aforesaid, well knowing that the same was so written and sent in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part in engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Company, James G. Tinsley. By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon the Mercantile National Bank, New York, for the payment of
113 sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley; he the said T. Garland Tinsley, at the same time and place when and where he so as aforesaid wrote the said endorsement on the back of the said check, well knowing the contents of the same, and that his said act was done in pursuance of and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Valley Fertilizer Company, on the second day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Florence, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars, as a partial payment for and in respect of fertilizer merchandise aforesaid, allotted to the said Tennessee Valley Fertilizer Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on their parts respectively, of engaging in the same, the said Frank Burbidge,

Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson, during the period of time aforesaid, at the City of New York, in the State of New York, the City of Washington, in the District of Columbia, Old Point Comfort and Hot Springs, in the State of Virginia, St. Augustine, in the State of Florida, and French Lick Springs, in the State of Indiana, unlawfully did as officers, directors and attorney of the said Colonial Development Company, Limited, meet together for the purpose of discussing and attending to the affairs of the said Colonial Development Company, Limited; they the said Frank Burbidge, Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson when and where they so met together aforesaid, well knowing the purpose of such meetings, and well knowing their acts in the premises to be acts in pursuance and to effect the object of the said unlawful conspiracy, and that the same were done as acts on their parts respectively of engaging in the said unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, during the period of time aforesaid, and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form aforesaid, unlawfully did engage in a conspiracy in restraint of trade and commerce among the several States; Against the
114 peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

SECOND COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the first count described, and were so engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord, nineteen hundred and three at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the grand jurors unknown, and engage in a conspidacy, among themselves and with such other

unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid; which said unlawful conspiracy in this count mentioned then and there was a conspiracy for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described; that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing and causing to be fixed, uniform and non-competitive prices, by them to be styled "current, reason-
115 able market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such times prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum ther-of during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be the

absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on the said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its excess sales, in which case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of pay-
116 ment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their co-operation in carrying out the said unlawful conspiracy, the said defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, and as being acts on the part of the said corporation and individual defendants respectively of engaging in that conspiracy, are now here in this count charged to be acts by the same corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned, and to have been acts on the part of the said corporation and individual defendants respectively of engaging in the last-named unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the

said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of trade and commerce among the several States;
117 against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

THIRD COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the said first count described, and so were engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the said United States, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the said United States, to wit, the offense of engaging in a combination, among themselves and with such other unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid, which said unlawful conspiracy in this count mentioned then and there was a conspiracy to engage in a combination for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and com-
118 merce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them to be styled "current,

reasonable market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such time prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful combination and ninety per centum thereof during the second year; it being a further element of the said unlawful combination in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be — absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on the said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its excess sales, in which
119 case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their cooperation in carrying out the said unlawful combination, the said

defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful combination; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, are now here in this count charged to be acts by the said corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a con-
120 spiracy to commit an offense against the said United States; Against the peace and dignity of the said *said* United States; *Against the peace and dignity of the said United States*, and contrary to the form of the statute in such case made and provided.

Fourth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in

connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State, but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchan-
121 dise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the aforesaid business and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section one of the said Act of Congress, approved July 2, 1890, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Ala-

bama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company,
122 and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly engage in a conspiracy in restraint of commerce among the several States, to wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, whereby the said commerce was restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise which were maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the period of such unlawful conspiracy, and greatly in excess of those prices which would have otherwise prevailed in the said States during the period of such unlawful conspiracy, and were therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby earnest money was given to secure the maintenance of such prices and compensation was made to those losing volume of business by reason of maintaining such prices, that is to say:

There was from time to time allotted to each of said corporation

defendants and firms an amount of tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporations defendants and firms paid into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sums becoming due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which faithfully maintained such uniform and non-competitive prices and failed to make sales
123 and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but sold and delivered through itself and its subsidiary companies a minimum amount thereof required as a guarantee of good faith, received from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid fell short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies made such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, as a penalty upon such excess sales, paid into such common fund like amounts per ton on the said respective kinds of fertilizers, divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means whereby said unlawful conspiracy was effected, a corporation of Ontario, Canada, whose stock was apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was the common fund aforesaid into which was paid the earnest money and penalties on excess sales aforesaid, and from which was paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which the same was operated and directed.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that within the period aforesaid of said unlawful conspiracy in this count of this indictment mentioned, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and did do and perform such acts as acts on their respective parts of engaging in the said unlawful conspiracy in this count of this indictment mentioned, and that each of such defendants at the time and place when

and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant- respectively, then and there well knew the character of such act and that such
124 act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, and as an act on the part of such defendant in engaging in the same, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year, nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the
125 tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to

Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee,
126 unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit,
127 "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawul conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer nierchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec. 6, 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abraham C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P.
128 Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said corporation and individual defendants, during the period of time aforesaid, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

Fifth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen

hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the
129 other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so

carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, approved July 2, 1890, the said corporation de-
130 fendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, and engage in a conspiracy among themselves and with such other unknown corporations and persons, in restraint of commerce among the several States, to-wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid by which unlawful conspiracy said commerce was to be restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the

various points of delivery in the said States of the conspiracy,
131 which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy, and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices, that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to make sales and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales as aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants
and firms and paid for by them at ten dollars a share; whose
132 treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary

and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful conspiracy was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that such act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

133 In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Dercherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one

Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesand, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company,
134 on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of

Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District
135 of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his, the said E. W. Connell's name as such Treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fer-

tilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tenneess, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn., Dec. 6 1904" and
136 above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for

the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

137 SIXTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United

States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An
138 Act to protect trade and commerce against unlawful restraints and monopolies"; that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorneys of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and in the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section 5440 of the Revised Statutes of the United States, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack,
139 George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Roys-

ter, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the United States, to wit, to engage in a combination in restraint of commerce among the several States, namely, a combination in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, and did then and there so conspire to commit the aforesaid offense by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy; and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices; that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to
140 make sales and deliveries of such merchandise through itself and its subsidiary — amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation

defendants and firms which, through itself and its subsidiary companies, should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful combination was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that
141 such act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the

object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at
142 West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and

within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchan-
143 dise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Arndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee,

unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Man-
144 ager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec 6 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee,

unlawfully did cause to be written and sent by mail to "D. P. Haynes and Bro.," at Oxford, Alabama, that certain letter of the date
145 set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley, By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did conspire to commit an offense against the United States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

ABRAM M. TILLMAN,
United States Attorney.

(Endorsed as follows:) No. 963. United States Circuit Court, Middle District of Tennessee. *The United States vs. Virginia-Carolina Chemical Company et als.*

Indictment for violating Act of Congress approved July 2, 1890, and entitled "An Act to Protect Trade and Commerce against unlawful restraints and monopolies," and Section 5440 R. S. U. S.

A True Bill. Robert Q. Stewart, Foreman of the Grand Jury.

Names of Witnesses Sworn and Examined Before the Grand Jury.

J. C. Adams, Henry E. Ahern, Lee Asheraft, Eugene Atkinson, N. E. Barker, W. F. Barrett, James C. Beck, J. M. Berry, W. W. Bird, L. W. Botts, Clarence Braden, S. D. Bramlitt, A. P. Brantley,
146 B. D. Brantley, Dewitt Brown, H. C. Brown, Arthur Bussey, Hezekiah Bussey, E. J. Blume, James A. Boyd, William F. Burns, Oscar Bright, J. W. Carter, B. G. Clark, C. W. Comes, E. W. Connell, Charles Earle Currie, R. L. Davis, Joseph Denee, W. P. Diehl, A. M. Dobbs, John V. Dobson, C. H. Drayton, W. L. Dumas, J. B. Duncan, S. Eastland, T. B. Edwards, Culpepper Exum, H. C. Fischer, J. B. Fiser, Albert French, C. A. Gambrill, A. H. George, John E. Gibbs, William Gilchrist, James M. Goldsmith, A. A. Green, E. P. Grice, W. A. Hansell, G. A. Harrington, H. J. Harby, Allen Hardison, L. C. Hayne, J. L. Haynes, D. P. Haynes, R. W. Henderson, P. W. Hendricks, E. R. Hodgson, junior, E. R.

Hodgson, senior, J. L. Horn, W. E. Hudson, T. J. Hunt, R. H. Johnston, T. V. Kessler, E. M. Kirk, Henry Kirn, H. L. Law, Alexander Leslie, J. A. Lindsey, W. Hampton Logan, Harry Luck, John A. Lewis, W. F. McKenzie, Robert F. Maddox, H. W. Malloy, E. R. Manning, H. L. Milligan, J. Allen Moore, M. B. Neece, W. J. Oliver, E. Thomas Orgain, D. B. Osborne, Every M. Paget, W. W. Perkins, Dr. J. D. Plunkett, F. B. Pope, William Price, Charles Rainey, Frederick Rayfield, Isaac W. Read, W. A. Reynolds, I. T. Rhea, W. E. Richards, H. A. Rogers, V. N. Roadstrum, W. G. Sadler, G. W. Sanders, E. M. Sentelle, W. McR. Smith, R. G. Sparrow, J. F. Stackley, C. A. Steifelmeyer, S. E. Stewart, W. B. Stratford, John Sutterer, E. R. Taber, Frank E. Taylor, W. B. Taylor, W. D. Tharin, J. R. Timmerman, J. W. Todd, S. W. Travers, George H. Tucker, E. Van Winkle, J. T. Welch, O. C. Wiley, C. H. Willcox, T. B. Williams, Benjamin L. Willingham, W. S. Wight, E. G. Woodling.

Filed 11:30 A. M., May 25, 1906. H. M. Doak, Clerk, by E. L. Doak, Deputy Clerk. Abram M. Tillman, U. S. Atty.

I, H. M. Doak, Clerk of the Circuit Court of the United States in and for the Middle District of Tennessee, hereby certify that the foregoing is a true, perfect, and complete copy of an indictment filed as thereupon endorsed, etc. In witness whereof I have hereunto signed my name and affixed the seal of said court, at my office, this the 26th day of May, 1906.

[SEAL OF COURT.] H. M. DOAK, *Clerk*.

147 *Warrant.*

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

To the Marshal of the Eastern District of Virginia, Greeting:

Whereas complaint in writing, on oath, has been made to me charging that Austin B. Carpenter stands indicted by the grand jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said Austin B. Carpenter on the eighth day of July, in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, did in the Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said Austin B. Carpenter did unlawfully conspire with divers other persons and corporations to commit an offense against the United States, to-wit, the offense of

engaging in a combination in restraint of trade and commerce among the several States of the United States; and application has been made to me that the said Austin B. Carpenter may be arrested and imprisoned and removed or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee;

Now therefore, you are hereby commanded to arrest the
148 said Austin B. Carpenter if he be found within your said District, and bring him forthwith before me at my Chambers in Richmond, in order that he may be dealt with according to law.

Richmond, July 14, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge.

Marshal's Return.

Pursuant to the within writ, I have taken the defendant Austin B. Carpenter into custody and now have him before Hon. Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia.

July 14, 1906.

MORGAN TREAT,
United States Marshal.

Conclusions of the Court.

Filed July 14th, 1906.

THE UNITED STATES
vs.
AUSTIN B. CARPENTER.

The conclusion reached by the Court is that in a proceeding for the arrest and removal of persons charged with a violation of the laws of the United States pursuant to section 1014 of the Revised Statutes of the United States, before a United States District
149 Judge sitting in the State of Virginia, in which state there no longer exists the right of a preliminary examination upon a criminal charge prior to the trial upon the merits, when such Judge is called upon to act as well in the matter of the apprehension of such persons, as in their removal to the jurisdiction in which they have been indicted, that upon the government's presentation of a sufficient indictment regularly found by a grand jury in a court of the United States, properly charging the commission of an offense within the district in which such indictment is found, coupled with proof of the identity of the person indicted, it is its duty to properly bail such person for appearance before the Court in which he is indicted, or cause him to be removed thereto.

Order Allowing Bail.

Filed July 14th, 1906.

UNITED STATES OF AMERICA, *Eastern District of Virginia, set:*

The within named Austin B. Carpenter having been brought before me, and identified; and it appearing by a duly authenticated copy of an indictment that he stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al,*" for violation of section one of the act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of Section 5440 of the Revised Statutes of the United States, it is ordered that the said Austin B. Carpenter give
150 bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial before said Court under the said indictment, or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee, to be there dealt with according to law.

Richmond, Va., July 14th, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the
Eastern District of Virginia.

Warrant of Imprisonment and Removal.

UNITED STATES OF AMERICA, *Eastern District of Virginia, set:*

The President of the United States to the United States Marshal of the Eastern District of Virginia, Greeting:

Whereas it has been made to appear that Austin B. Carpenter stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled: "The United States *vs.* Virginia-Carolina Chemical Company *et al,*" for violation of section one of the act of Congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States; and whereas the said Austin B. Carpenter having been brought before me, and identified; and a certified
151 copy of said indictment furnishing probable cause to believe him to be guilty as therein charged, and whereas it was thereupon ordered by me that said defendant give bail in the sum of five thousand dollars with one or more sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial under said indictment, or that in de-

fault thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee to be there dealt with according to law; and the said defendant having failed and refused to give bail as required, therefore;

You are hereby commanded in the name and by the authority of the said United States to imprison the said Austin B. Carpenter in accordance with law, and that with all convenient speed you remove him hence to the said Middle District of Tennessee and there surrender him to the Marshal of that District, there to be dealt with according to law.

Richmond, Va., July 14, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

Marshal's Return on Foregoing Warrant.

Executed July 14, 1906 by taking the within named defendant Austin B. Carpenter into custody, but before the order of removal was executed, a writ of *Habeas Corpus* was issued by order of the Circuit Court of the United States for the Eastern District of Virginia, sitting at Richmond, Virginia, commanding me to produce the body of the said Austin B. Carpenter before the said United States Circuit Court in the City of Richmond, Virgina, forthwith,
152 and in pursuance of said writ of *Habeas Corpus*, I took the said Austin B. Carpenter before the United States Circuit Court as aforesaid, by which court said writ of *Habeas Corpus* was discharged and and appeal allowed to the said Austin B. Carpenter to the Supreme Court of the United States, pending which appeal the said Austin B. Carpenter was by order of said Circuit Court discharged from custody on bond conditioned for his appearance before said Circuit Court to abide such order as should be made by said Circuit Court upon return of the mandate of said Supreme Court of the United States upon determination of said appeal.

Richmond, Virginia, July 14, 1906.

MORGAN TREAT,
United States Marshal.

Statement of Proceedings and Order.

Filed July 14, 1906.

THE UNITED STATES OF AMERICA, *Eastern District of Virginia:*

THE UNITED STATES
vs.
AUSTIN B. CARPENTER.

This is an application under the provisions of Section 1014 of the United States Revised Statutes for a warrant for the removal of

Austin B. Carpenter to the Middle District of Tennessee and comes before me as follows:—

The District Attorney for this District, together with Mr.
153 E. T. Sanford, Counsel for the United States, presented to me a verified complaint of Morgan Treat, United States Marshal for this District, with the certified copy of an Indictment filed on May 25th, 1906, in the Circuit Court — the United States for the Middle District of Tennessee in the case of the United States *vs.* Virginia-Carolina Chemical Company and others defendants, including among such defendants the said ——

Said complaint and copy of said indictment are made parts of this order. Upon the exhibition of this Indictment and affidavit and the *ex parte* motion of the counsel for the United States I made an order for the arrest of said Austin B. Carpenter and his production before me.

This order was duly executed by the said Marshal, who arrested the said Austin B. Carpenter and brought him before me in Richmond on this 14th day of July, 1906, as shown by his return. When the accused was so brought before me it was moved by the counsel for the United States that inasmuch as the indictment charged offenses against the United States triable in the Circuit Court of said United States for the Middle District of Tennessee, and the identity of the defendant was admitted, that an order be forthwith made for the commitment of said Austin B. Carpenter for trial before said Circuit Court.

It was further stated and agreed that while the defendant Austin B. Carpenter was not a resident of the Eastern District of Virginia, he was present in this district with his counsel, and that so far as the jurisdiction in the Eastern District of Virginia was concerned, he consented to these proceedings being instituted here, and to their being conducted here with the same force and effect, and in like manner as if he were a resident of the Eastern District of Virginia; and furthermore waived the previous issuance of any bench warrant for his arrest, from the Circuit Court of the Middle District of Tennessee, if the same were necessary.

This motion was made upon the certified copy of the Indictment without any further testimony, the identity of the party arrested and brought before me with the Austin B. Carpenter men-
154 tioned in the Indictment being admitted.

And thereupon the defendant Austin B. Carpenter offered himself as witness in his own behalf, and being about to be sworn, the United States, by its counsel, thereupon objected to the witness being sworn or to any testimony being given in rebuttal of the Indictment in these proceedings, on the ground that the identity of the defendant being admitted, inasmuch as the Indictment on its face charges offenses against the United States committed and triable in the jurisdiction in which the defendant stands indicted, no evidence is admissible here to impeach the indictment, and the order of commitment should be made without other proof.

The defendant's counsel thereupon offered to prove by the defendant and other witnesses then and there present, that the Circuit

Court for the Middle District of Tennessee had no jurisdiction over the person of said defendant touching the offense charged in said indictment, in that defendant and said other witnesses, would, if permitted, testify that said alleged conspiracies which are in the said indictment mentioned were not, nor was any or either of the.., engaged in, at or within said Middle District of Tennessee.

That said Austin B. Carpenter did not, at or within said Middle District of Tennessee engage in, or do or take part in any act matter or thing in or about or with respect to the engaging in, promoting or furthering the said alleged conspiracies or any or either of them, or to effect the object thereof.

That said Austin B. Carpenter did not, at any time or at any place, join in, assent to, or know of said alleged conspiracies or any or either of them, engaged in or entered upon in said Middle District of Tennessee, or any conspiracy which had been or was engaged in at or within said Middle District of Tennessee, or do any act, matter or thing in or about the formation, engaging in, furthering or promoting or to effect the object of any such conspiracy as is here-
155 inabove referred to.

That if said alleged conspiracies which are in said indictment mentioned or referred to, or any or either of them, ever were or was engaged in at or within the Middle District of Tennessee by said other defendants or any or either of them or by any corporations or persons, the said Austin B. Carpenter did not, at any time or at any place engage in or join, or assent to, or know of the same or do any act in or about the engaging in or promotion thereof or to effect or towards effecting the object of the same.

Nor has defendant done, or performed, or been engaged in, or a party to the same, or any of them in any other place or places at any other time or times whatsoever.

Thereupon counsel for the Government renewed its objections as aforesaid.

After hearing counsel on both sides the Court announced its conclusions as follows:—

"The conclusion reached by the Court is that in a proceeding for the arrest and the removal of persons charged with a violation of the laws of the United States pursuant to section 1014 of the Revised Statutes of the United States, before a United States District Judge, sitting in the State of Virginia, in which State there no longer exists the right of a preliminary examination upon a crime charged prior to the trial upon the merits, when said Judge is called upon to act as well in the matter of the apprehension of such persons, as in their removal to the jurisdiction in which they have been indicted, that upon the Government's presentation of a sufficient indictment regularly found by a grand jury in a court of the United States, properly charging the commission of an offense within the district in which such indictment is found, coupled with proof of the identity of the person indicted, it is its duty to properly
156 bail such person for appearance before the court in which he is indicted, or cause him to be removed thereto."

Therefore it was ordered that the testimony offered is inadmissible and will not be received, and I therefore made the following order:

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The within named Austin B. Carpenter having been brought before me, and identified; and it appearing by a duly authenticated copy of an indictment that he stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," for violation of section one of the act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States, it is ordered that the said Austin B. Carpenter give bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial before said Court under the said indictment; or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee, to be there dealt with according to law.

Richmond, Va., July 14th, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

157 And after said order had been made and the defendant declined to give bond, the Counsel for the United States moved that the warrant do issue directed to the Marshal of this District for the imprisonment and removal of the said Austin B. Carpenter to the Middle District of Tennessee and his delivery to the custody of the United States Marshal of that district.

On such motion counsel for the said Austin B. Carpenter objected and again offered the said Austin B. Carpenter as a witness, together with the other witnesses herebefore referred to, to establish the same matters and facts as hereinbefore stated with regard to the objection to the order for the commitment of the said Austin B. Carpenter which testimony was again offered and was again objected to by the counsel for the United States on the same grounds as above set forth, and on the further ground that these matters could not now be inquired of in this stage of the proceedings, and was again excluded by the court, to all of which counsel for the said Austin B. Carpenter then and there duly excepted and had the exceptions noted and entered.

I therefore issued a warrant directed to the Marshal as follows:

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

Richmond, Va., July 14, 1906.

Warrant of Imprisonment and Removal.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The President of the United States to the United States
158 Marshal of the Eastern District of Virginia, Greeting:

Whereas it has been made to appear that Austin B. Carpenter stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said court entitled: "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," for violation of section one of the act of Congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States; and whereas the said Austin B. Carpenter having been brought before me, and identified; and a certified copy of said indictment furnishing probable cause to believe him to be guilty as therein charged, and whereas it was thereupon ordered by me that said defendant give bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial under said indictment, or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee to be there dealt with according to law; and the said defendant having failed and refused to give bail as required, therefore:

You are hereby commanded in the name and by the authority of the said United States to imprison the said Austin B. Carpenter in accordance with law, and that with all convenient speed you remove him hence to the said Middle District of Tennessee and there surrender him to the Marshal of that District there to be dealt with according to law.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

Richmond, Va., July 14, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge.

Richmond, Va., July 14, 1906.

159 *Certificate of Clerk.*

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

I, G. E. Bowden, Clerk of the District Court of the United States for the Eastern District of Virginia, do hereby certify that the foregoing is a full and true transcript of the record and proceedings in the therein entitled cause made in obedience to the direction in the return of the Honorable Edmund Waddill, Jr., Judge of said Court to the writ of certiorari, attached to and made a part of said record.

In witness whereof, I have hereunto set my hand and affixed the

seal of the said District Court, at the City of Richmond, this 14th day of July, A. D. 1906.

[Seal United States District Court.]

G. E. BOWDEN,
Clerk United States District Court,
By JOSEPH P. BRADY,
Deputy Clerk U. S. District Court.

Certificate of United States District Judge.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

I, Edmund Waddill, Jr., Judge of the District Court of the United States for the Eastern District of Virginia do hereby certify that the foregoing is a full and true transcript of the record and
160 proceedings had before me in the therein entitled cause.

In witness whereof, I hereunto set my hand and seal of said court at Richmond, this 18th day of July, A. D., 1906.

[Seal United States District Court.]

EDMUND WADDILL, JR.,
United States District Judge.

161 *Conclusions of the Court.*

Filed July 14th, 1906.

In the United States Circuit Court for the Eastern District of Virginia.

In the Matter of the Petition of AUSTIN B. CARPENTER for Writs of *Habeas Corpus* and Certiorari.

AUSTIN B. CARPENTER, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

Petitioner alleges that he is unlawfully deprived of his liberty. He prays that by virtue of the writ of *Habeas Corpus,* he may be discharged from custody. I find from the petition, from its exhibits, and from respondent's reply that petitioner has been committed to the Marshal of the Eastern District of Virginia by an order of the United States District Judge of that District, with directions to remove petitioner to the Middle District of Tennessee, in order that he may be there tried on an indictment in which he with others, is charged with a violation of the laws of the United States. The pro-

ceedings so resulting were conducted under the provisions of section 1014 of the Revised Statutes of the United States. The Judge so hearing the matter, and so issuing said order of removal, acted in conformity with like proceedings, as provided for in criminal actions in the state of Virginia, in which state petitioner resides, and where the application for his removal was made.

On the hearing of this petition, I am asked to permit petitioner to offer testimony, the object of which is to show that
162 probable cause does not exist as to petitioner's guilt of the offense of which he is charged; that he was not within the limits of the jurisdiction of the Middle District of Tennessee when said offense is alleged to have been committed; and testimony tending to show that he is innocent of the charge alleged in the indictment returned against him. Petitioner insists that he should not be removed to said Middle District of Tennessee for trial, but should be discharged from arrest. Should I, on this hearing, permit such testimony? I find from the record before me, that the indictment charges conspiracy; that it is alleged therein that petitioner with others, did in the Middle District of Tennessee, conspire to commit an offense against the laws of the United States. The indictment, in my judgment, sufficiently sets forth such offense. I find that it is in due form, and that it charges a crime; that it alleges a conspiracy such as is prohibited by the laws of the United States; and that an overt act, as described in the statute is charged as having taken place in the Middle District of Tennessee. Such being the charge, I am of the opinion, under the law applicable thereto, that the personal presence of petitioner in said jurisdiction was not essential; and that he can be lawfully proceeded against in that district; and if the allegations set out in the indictment are sustained by competent evidence, that a conviction there can be upheld.

If such be the case, does it not follow that the testimony offered by the petitioner is immaterial? The indictment charges the commission of a crime; alleges that the petitioner with others committed it; and the laws authorizes his conviction in the district to which
he has been ordered removed, if an overt act in pursuance of
163 said conspiracy was committed there. Technical objections to said indictment should not be considered by me on this hearing; they should only be heard by the court in which the indictment was returned.

While it is true that the order to remove for trial should only be issued in cases where probable cause has been shown, it is equally true that a certified copy of the indictment, with proof of the identity of the party accused, has been in a number of well considered cases, held to establish probable cause, and to authorize the warrant of removal. It must be conceded that the authorities are conflicting; but to my mind the path we should follow has been plainly indicated by the opinions of that great tribunal, whose mandates we all obey, whose judgments are the supreme law of the land. In Beavers *v.* Hanckel, 194 U. S., 73, the case rested on the efficacy of the indictment; for no other evidence of guilt was offered. The indictment was held to be *prima facie* evidence of the existence of probable cause.

It satisfied the requirements of the constitution, and the laws made thereunder. Why should not the indictment in the case we now have under consideration serve the same purpose? The testimony tendered is, as I understand this case, immaterial, and the identity of the accused is admitted. His guilt or innocence is not to be ascertained by testimony offered in this jurisdiction, in connection with questions involved in the proceedings relating to the warrant of removal, or this writ of *habeas corpus*. That matter must go to the jury impaneled by the court in which the indictment was returned. To hold otherwise would result in inextricable confusion, and to discharge the petitioner on the showing now made, would tend to impede the due administration of justice; and can
164 only be done, in my opinion, by a strained construction of the statutes.

The writ will be dismissed, and petitioner will be remanded to the custody of the Marshal.

NATHAN GOFF,
U. S. Circuit Judge.

July 14th, 1906.

Order Dismissing Petition and Discharging Writ of Habeas Corpus and Allowing Appeal.

Filed July 14th, 1906.

In the Circuit Court of the United States for the Eastern District of Virginia.

In the Matter of the Petition of AUSTIN B. CARPENTER for Writs of *Habeas Corpus* and Certiorari.

AUSTIN B. CARPENTER, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

This cause was on this, the 14th day of July, 1906, heard before the Honorable, the Circuit Court of the United States for the Eastern District of Virginia, the Honorable Nathan Goff, Circuit Court Judge, presiding, upon the petition of said Austin B. Car-
165 penter in this cause and the return of the Marshal, the defendant, thereto, and the return of the District Judge of the Eastern District of Virginia (by agreement the copy of the findings and order of said District Judge being here now taken as his return to said writ of certiorari, and the motion of the petitioner, by his counsel, hereinafter mentioned.

The petition and the return of the Marshal thereto were read, and thereupon the petitioner presented himself as a witness and his coun-

sel moved the Court that he be sworn in order to testify as such, and as such witness to prove the facts averred and set forth in said petition, which facts were then and there repeated and restated to the Court; and his counsel then also stated that the said witness, and other persons then present as witnesses, would testify and prove that the said facts set forth and averred in the petition and exhibits, and repeated by him to the Court, were true.

Thereupon the Honorable Edward T. Sanford, Special Counsel representing the United States, and also the defendant Marshal, objected to the swearing of the said petitioner as a witness and also to the admission of said evidence, upon the ground that said evidence was immaterial and irrelevant, and that it was not allowable to contradict or transverse by evidence in this Court the averments of the indictment which had been found against the petitioner in the Circuit Court of the United States for the Middle District of Tennessee, and that there was no error in the action of the District Judge. The objection so made was sustained, and the witness not allowed to be sworn nor allowed to testify to the facts above stated, to which action of the Court the petitioner then and there excepted.

166 Thereupon it was ordered and adjudged by the said Court that the petition be dismissed and the writ of *habeas corpus* heretofore issued in this cause upon the said petition be and the same is hereby dismissed and discharged; and that the said Austin B. Carpenter be remanded to the custody of said Morgan Treat, U. S. Marshal, for the Eastern District of Virginia, to be dealt with by him according to the directions of the writ of the process under which he had custody of the said Austin B. Carpenter.

Thereupon, the petitioner presented his petition, setting forth that he was aggrieved by the said order dismissing the said writ of *habeas corpus*, and praying that he be allowed to prosecute an appeal from said final order or judgment, to the Supreme Court of the United States under and according to the law of the United States in that behalf made together with his assignment of error in that behalf which appeal is allowed; and the petitioner having been allowed and the said appeal being hereby granted, the petitioner, by his counsel, thereupon moved the Court that he be enlarged or admitted to bail pending the decision of his said case upon said appeal; and thereupon it was accordingly ordered that the said petitioner and appellant be, and he is hereby enlarged upon his bond and admitted to bail, pending the said appeal to the Supreme Court of the United States; said bond to be in the penal sum of $5,000.00, to be taken and approved by the Clerk of this Court and conditioned for the said petitioner and appellant to appear before this Court to abide such order as shall be made by this Court upon the mandate of the Supreme Court of the United States upon the determination of petitioner's said appeal; and upon the execution by the said Austin B. Carpenter of such bond, with surety or sureties, to be approved by the Clerk of this Court, he will be enlarged and admitted to bail. The Clerk will take as surety any satis-

167 factory guaranty company.

The opinion of the Court in dismissing the petition and

discharging the writ of *habeas corpus* is made part of the record herein and will be copied by the Clerk in the transcript on appeal.

NATHAN GOFF,
U. S. Circuit Judge.

July 14, 1906.

Appearance Bond.

Filed July 14th, 1906.

In the Circuit Court of the United States for the Eastern District of Virginia.

In the Matter of the Petition of AUSTIN B. CARPENTER for Writs of *Habeas Corpus* and Certiorari.

AUSTIN B. CARPENTER, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

We, as principal, and American Surety Company of New York a guaranty and surety company, organized and existing under the laws of the State of New York, with power and authority to become surety for principals in appearance bonds, jointly and severally acknowledge ourselves to owe and to be bound to the United States of America in the penal sum of Five Thousand Dollars ($5,000.00), severally to be made and levied of our goods, chattels, lands and tenements, if default be made herein.

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The condition of this obligation is as follows: Whereas the said Austin B. Carpenter, being detained in the custody of Morgan Treat, United States Marshal for the Eastern District of Virginia, under commitment and warrant of removal to the Circuit Court of the United States for the Middle District of Tennessee, granted by the Honorable Edmund Waddill, Jr., Judge of the District Court for the Eastern District of Virginia, presented his petition for and sued out a writ of *habeas corpus* from the Circuit Court of the United States for the Eastern District of Virginia, and the said writ of *habeas corpus* duly issued to the said Treat, Marshal, and he made his return thereto; and the said matter of *habeas corpus* came on for hearing before the said Circuit Court of the United States for the Eastern District of Virginia, on the 14th day of July, 1906, when by order thereof the said petition was dismissed and the said writ of *habeas corpus* discharged, and the said Austin B. Carpenter remanded to the custody of the said Morgan Treat, Marshal, to be proceeded with as provided by law; and

Whereas, from the said final order dismissing the said petition and writ of *habeas corpus*, the said Austin B. Carpenter prayed an appeal to the Supreme Court of the United States, which was granted and said appeal perfected; and

Whereas, the said Circuit Court of the United States allowed said appeal, ordered that pending said appeal the said Austin B. Carpenter
169 upon the execution of a bond in the penal sum of Five Thousand Dollars ($5,000.00), conditioned as by said order was provided, might be enlarged and admitted to bail;

Now, therefore, in compliance therewith, and in order to be so enlarged, the said Austin B. Carpenter as principal, and the said American Surety Company of New York, as surety, execute this bond upon the condition that, if the said Austin B. Carpenter shall duly personally appear in and before the Circuit Court of the United States for the Eastern District of Virginia, then and there to answer the exigency and determination of said appeal, and personally abide the final decision and determination of the said Supreme Court of the United States and of the said Circuit Court of the United States, upon the mandate of the said Supreme Court of the United States, and obey and abide the orders of said Circuit Court of the United States, and not depart without leave upon the conditions aforesaid, and upon the entry of said orders upon said appeal, then and in that event this bond or obligation shall be void; but otherwise it shall be and remain in full force and effect.

In witness whereof, the said Austin B. Carpenter as principal, and the said American Surety Company of New York as surety, the said surety being represented by and through Robert Le Masurier, its duly authorized agent and attorney, have hereunto on this the 14th day of July, 1906, set their hands.

AUSTIN B. CARPENTER. [SEAL.]

[Seal of American Surety Company.]

AMERICAN SURETY COMPANY OF NEW YORK,
By ROB'T LE MASURIER, *Agent.*

Signed, sealed and delivered in the presence of

JOSEPH P. BRADY, *Clerk.*

170 *Notice of Appeal.*

Filed July 14th, 1906.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of AUSTIN B. CARPENTER for Writs of *Habeas Corpus* and Certiorari.

AUSTIN B. CARPENTER, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia; JOSEPH P. BRADY, Deputy Clerk of the District Court of the United States for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

SIRS: Please take notice that Austin B. Carpenter petitioner above named hereby appeals to the Supreme Court of the United States from the final order made and entered on the 14th day of July, 1906, by the Honorable Nathan Goff, Judge of the Circuit Court of the United States, Fourth Judicial Circuit of Virginia, discharging his application for writs of *habeas corpus* and certiorari and from each and every part of said order.

Dated at the City of Richmond, State of Virginia, on the 14th day of July, 1906.

Respectfully,

JOHN J. VERTRESS,
JAMES C. BRADFORD,
JOHN S. MILLER,
Attorneys for Petitioner and Appellant.

171 *Petition for Appeal.*

Filed July 14th, 1906.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of AUSTIN B. CARPENTER for Writs of *Habeas Corpus* and Certiorari.

AUSTIN B. CARPENTER, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

The petition of the above named petitioner, Austin B. Carpenter, for an order allowing an appeal to the Supreme Court of the United States from the final order in the above styled cause, discharging the writs of *habeas corpus* and certiorari in this cause and remanding petitioner to the custody of the said Morgan Treat, United States marshal.

Austin B. Carpenter, the petitioner and appellant above named, feeling himself aggrieved by the final order heretofore made and entered by this Court in this cause on the 14th day of July, 1906, whereby it was ordered that his petition for a writ of *habeas corpus*, directed to said Morgan Treat, United States Marshal, in and for the said District of Virginia, and his writ of certiorari, directed to Hon. Edmund Waddill, Jr., United States District Judge for said
172 District, commanding him to return all the proceedings, warrants, depositions, examinations, commitments and record of all proceedings against your petitioner to the Circuit Court of the United States, were, after the same had been duly granted and return made thereon by this Honorable Court, discharged, and petitioner was by said order remanded to the custody of said Morgan Treat, United States Marshal, as aforesaid.

Now come, Jno. J. Vertress and Jas. C. Bradford, his attorneys and counsel, praying this court for an order allowing your petitioner to prosecute an appeal from said final order of the United States Circuit Court to the Supreme Court of the United States, and according to the laws of the United States in that behalf made.

Your petitioner is advised by his counsel that *in* the proceedings referred to in the petition for writs of *habeas corpus* and certiorari, and the said order discharging the same have infringed the constitutional rights of your petitioner and that the commitment of your petitioner and the restraint of his person referred to in said petition and under said order is without authority of law and that the said United States District Judge acting as United States Commissioner, before whom your petitioner was arraigned, as set forth in said peti-

tion hereinbefore referred to had no jurisdiction to either require bail of petitioner or to commit petitioner in default thereof, and your petitioner desires in good faith to submit the constitutional questions and other questions involved to the Supreme Court of the United States for their determination.

And your petitioner will ever pray, etc.

JOHN J. VERTRESS,
JAMES C. BRADFORD,
JOHN S. MILLER,
Attorneys for Petitioner and of Counsel.

173 UNITED STATES OF AMERICA, *Eastern District of Virginia:*

Austin B. Carpenter, being duly sworn on his oath, deposes and says that he is the petitioner above named, that the foregoing petition is true of his own knowledge, except as to those matters which are therein stated on his information and belief, and as to those matters, he believes them to be true.

—— ——.

Sworn to before me this 14th day of July, 1906.

JOSEPH P. BRADY,
Clerk of the United States Circuit Court,
Eastern District of Virginia.

Assignment of Errors.

Filed July 14th, 1906.

In the Supreme Court of the United States.

In the Matter of the Petition of AUSTIN B. CARPENTER for Writs of *Habeas Corpus* and Certiorari.

AUSTIN B. CARPENTER, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

174 The petitioner, Austin B. Carpenter, by John J. Vertress and Jas. C. Bradford and John S. Miller, his Counsel in connection with his petition of appeal herein, entered herein, to the Supreme Court of the United States, from the final order made and entered in the United States Circuit Court of the Fourth Judicial Circuit in and for the Eastern District of Virginia, discharging the writs of *Habeas Corpus* and certiorari and remanding petitioner to the custody of the said Morgan Treat, Marshal, *and* makes and files the following assignment of errors:

1. The court erred in discharging the petitioner's writs of *Habeas Corpus* and Certiorari and remanding him to the custody of the United States Marshal.

2. In refusing to grant the prayer of said writs.

3. In refusing to discharge said petitioner.

4. In holding that the restraint of the petitioner's liberty is legal.

5. In holding that the restraint of your petitioner is not in violation of his substantial rights.

6. In holding that said alleged indictment or any count thereof stated an offence against the laws of the United States.

7. In holding that the alleged indictment, or any count thereof was sufficient upon which to base a warrant of removal.

8. In holding that there was sufficient evidence of probable cause.

9. In holding that the warrant of removal made by the United States District Judge for the Eastern District of Virginia was issued upon the finding of probable cause; and in not holding that said order & warrant of removal were unauthorized & void because said District Judge refused to receive or hear any evidence offered by petitioner.

10. In holding that the alleged indictment with proof of
175 identity was conclusive evidence of probable cause.

11. In holding that upon the introduction in evidence of the alleged indictment with proof of identity that the defendant, your petitioner, was not entitled to introduce evidence offered by him and in refusing to hear or receive any evidence offered by him to show that the alleged offence, charged in said indictment and in each count thereof had not been committed by him in the State of Tennessee, in which state the indictment was found and in so holding, violating Article V and Article VI of the Amendments to the Constitution of the United States in that he was deprived of his liberty without due process of law.

12. In failing to hold that your petitioner is deprived of his liberty without due process of law in violation of Article V of the Amendments to the Constitution of the United States, in that said District Judge refused to hear or receive any evidence offered by your petitioner in that the complaint and evidence referred to herein, which were the sole authority for the petitioner's arrest and commitment as aforesaid failed to charge the petitioner with any crime against the laws of the United States.

13. In failing to hold that the petitioner's detention was in violation of Article V of the amendments to the Constitution of the United States in that the said United States District Judge, sitting as United States Commissioner and the United States District Judge has such jurisdiction to order the arrest and commitment of your petitioner, and that your petitioner is held to answer for a crime without any sufficient or valid indictment of a grand jury.

14. In failing to hold that restraint of your petitioner is in violation of Article IV of the Amendments to the Constitution of the United States, because it appears from the indictment upon
176 which the warrant in this case was issued that it was wholly void.

15. In failing to hold — the restraint of your petitioner is in violation of the provisions of Article IV of the amendments to the Constitution of the United States for the reasons particularly specified in his petition for a writ of *habeas corpus*.

16. In holding that a warrant of removal should issue for the reason that the proceedings conclusively show, by the indictment that the venue for the facts alleged in the indictment is not and was not in the Middle District of the State of Tennessee or in the State of Tennessee.

17. In failing to hold that the restraint of your petitioner is in violation of the provisions of Article VI of the amendments to the constitution of the United States for the reason that upon the proof offered to be made and rejected by the United States District Judge, sitting as a commissioner, and the United States District Judge and this Honorable Court, sitting upon the hearing of the petition of *habeas corpus*, and by the averments of said petition which were not controverted, it was conclusively shown that the offences charged in the indictment were not committed in the Middle District of the State of Tennessee or in the State of Tennessee, and that he could not be lawfully tried by a jury of the State of Tennessee and of the Middle District of Tennessee where said indictment was found.

18. In holding that the warrant of removal was properly issued, as the record and proceedings conclusively show that the alleged offence, complained of in the indictment and the several counts thereof, did not occur within the Middle District of the State of Tennessee, or in the State of Tennessee, and that your petitioner did not conspire to commit any offence within the
177 State of Tennessee, or in the Middle District thereof.

19. In holding that your petitioner was lawfully in the custody of said Morgan Treat, United States Marshal in and for the Eastern District of Virginia, and was lawfully deprived of his liberty by him by due process of law.

20. For other errors appearing on the record, by reason whereof, the petitioner prays that the said order, discharging said writs of *Habeas Corpus* and Certiorari be reversed and the petitioner discharged from custody.

JOHN J. VERTRESS,
JAMES C. BRADFORD,
JOHN S. MILLER,
Attorneys for Petitioner and Appellant.

Appeal Bond.

Filed July 14th, 1906.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of AUSTIN B. CARPENTER for Writs of *Habeas Corpus* and Certiorari.

AUSTIN B. CARPENTER, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

178 Know all men by these presents, that we, Austin B. Carpenter and James G. Tinsley his surety, are held and firmly bound unto the United States of America, in the full and just sum of Five hundred dollars to be paid to the United States, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this 14th day of July, 1906.

Whereas, lately, to-wit; on the 14th day of July, 1906, at the Circuit Court of the United States, in and for the Fourth Judicial Circuit, Eastern District of Virginia, in a proceeding therein pending, an order was entered discharging the writs of *habeas corpus* and certiorari, of the above named petitioner in the above mentioned proceeding and said petitioner having duly obtained an appeal from the said order to the Supreme Court of the United States and filed a copy thereof in the Clerk's office of said Circuit Court to review the same,

Now, the Condition of the Above Obligation, is such, that if the said petitioner Austin B. Carpenter, shall prosecute said appeal to effect and shall answer all costs if he should fail to make said appeal good, then this obligation to be void; else to remain in full force and effect.

AUSTIN B. CARPENTER. [SEAL.]
JAMES G. TINSLEY. [SEAL.]

Sealed, and delivered, and taken and acknowledged, this 14th day of July, 1906, before me,

JOSEPH P. BRADY, *Clerk.*

UNITED STATES OF AMERICA,
Eastern District of Virginia, To wit:

179 James G. Tinsley being duly sworn says that he is worth more than the sum of Five Hundred Dollars, over and above all his just debts and liabilities.

Sworn to before me this 14th day of July, 1906.

JOSEPH P. BRADY, *Clerk.*

Citation.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of AUSTIN B. CARPENTER for Writs of *Habeas Corpus* and Certiorari.

AUSTIN B. CARPENTER, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia; JOS. P. BRADY, Deputy Clerk of the District Court of the United States for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Judge L. L. Lewis, United States District Attorney for the Eastern District of Virginia, Jos. P. Brady, Clerk of the United States Circuit Court for the Eastern District of Virginia, Morgan Treat, United States Marshal in and for the Eastern District of Virginia; Hon. Edmund
180 Waddill, Jr., United States District Judge for the Eastern District of Virginia, and Jos. P. Brady, Deputy Clerk of the United States District Court for the Eastern District of Virginia:

You are cited and admonished to be and appear at the Supreme Court of the United States at the City of Washington, within thirty days from the date of this writ, pursuant to an appeal duly allowed by the Circuit Court for the Fourth Judicial Circuit, Eastern District of Virginia and filed in the Clerk's Office of said Court on the 14th day of July, 1906, in the cause entitled, in the matter of the petition of Austin B. Carpenter for writs of *habeas corpus* and certiorari, Austin B. Carpenter, appellant, *versus* Morgan Treat, United States Marshal in and for the Eastern District of Virginia, Jos. P. Brady, Deputy Clerk of the District Court of the United States in and for said Eastern District of Virginia, and Hon. Edmund Waddill, Jr., United States District Judge in and for said Eastern District of Virginia, Appellees, to show cause, if any, why the final

order of said Circuit Court, rendered against the appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Hon. Nathan Goff, Judge of the United States Circuit Court, this 14th day of July, A. D., 1906.

NATHAN GOFF,
Judge of the Circuit Court of the United States.

Acceptance of Service by United States District Judge.

Legal service of the within Citation is hereby acknowledged this 21st — July, 1906.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

181 *Marshal's Return.*

Executed this 23rd day of July 1906, by delivering in person in the City of Richmond, Va., a true copy of the within citation to the following named persons viz: L. L. Lewis United States District Attorney for the Eastern District of Virginia, Joseph P. Brady Clerk of the United States Circuit Court for the Eastern District of Virginia, Joseph P. Brady Deputy Clerk of the United States District Court for the Eastern District of Virginia.

MORGAN TREAT,
United States Marshal.

Further executed this 23rd day of July 1906, by delivering in person in the City of Richmond, Va. to Morgan Treat United States Marshal for the Eastern District of Virginia, a true copy of this citation.

MORGAN TREAT,
United States Marshal,
By M. J. ENRIGHT,
Office Deputy Marshal.

182 *Order Transmitting Record.*

And thereupon, it is ordered by the Court here that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the Supreme Court of the United States of America, and the same is transmitted accordingly.

Teste:

JOSEPH P. BRADY,
Clerk United States Circuit Court.

Clerk's Certificate.

THE UNITED STATES OF AMERICA
Eastern District of Virginia, ss:

I, Joseph P. Brady, Clerk of the Circuit Court of the United States for the Eastern District of Virginia, do hereby certify that the foregoing is a full and true transcript of the record and proceedings of the said Circuit Court, together with all things thereunto relating, in the therein entitled cause.

In testimony whereof, I hereunto set my hand and affix the seal of the said Circuit Court of the United States for the Eastern District of Virginia, at Richmond, this 10th day of August, A. D., 1906.

[Seal United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Endorsed on cover: File No. 20,337. E. Virginia C. C. U. S. Term No. 372. Austin B. Carpenter, appellant, *vs.* Morgan Treat, United States marshal in and for the eastern district of Virginia, *et al.* Filed August 14, 1906. File No. 20,337.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 373.

FORTESQUE WHITTLE, APPELLANT,

vs.

MORGAN TREAT, UNITED STATES MARSHAL IN AND FOR THE EASTERN DISTRICT OF VIRGINIA, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

FILED AUGUST 14, 1906.

(20,338.)

(20,338.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906.

No. 373.

FORTESQUE WHITTLE, APPELLANT,

vs.

MORGAN TREAT, UNITED STATES MARSHAL IN AND FOR THE EASTERN DISTRICT OF VIRGINIA, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

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a In the Supreme Court of the United States.

In re Petition of FORTESQUE WHITTLE for Writs of *Habeas Corpus* and Certiorari.

FORTESQUE WHITTLE, Appellant,

vs.

MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia; Jos. P. BRADY, Deputy Clerk of the District Court of the United States for the Eastern District of Virginia, and Hon. EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Judge L. L. Lewis, United States District Attorney for the eastern District of Virginia; Jos. P. Brady, Clerk of the United States Circuit Court for the eastern district of Virginia; Morgan Treat, United States Marshal in and for the eastern District of Virginia; Hon. Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia, and Jos. P. Brady, Deputy Clerk of the United States District Court for the eastern District of Virginia:

You are cited and admonished to be and appear at the Supreme Court of the United States at the City of Washington, within thirty days from the date of this writ, pursuant to an appeal duly allowed by the Circuit Court for the Fourth Judicial Circuit, Eastern District of Virginia, and filed in the Clerk's office of said Court on the 14th day of July, 1906, in the cause entitled, in the matter of the b petition of Fortesque Whittle for writs of *habeas corpus* and certiorari, Fortesque Whittle, appellant, *versus* Morgan Treat, United States Marshal in and for the eastern District of Virginia, Jos. P. Brady, Deputy Clerk of the District Court of the United States in and for said eastern District of Virginia, and Hon. Edmund Waddill, Jr., United States District Judge, in and for said Eastern District of Virginia, Appellees, to show cause, if any, why the final order of said Circuit Court, rendered against the appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Hon. Nathan Goff, Judge of the United States Circuit Court, this 14th day of July, A. D., 1906.

NATHAN GOFF,
Judge of the Circuit Court of the United States.

c Legal service of the within citation is hereby acknowledged this 21st July, 1906.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

Executed this 23rd day of July 1906 by delivering in person in the City of Richmond, Va. a true copy of the within citation to the following named persons viz: L. L. Lewis United States District Attorney for the Eastern District of Virginia, Joseph P. Brady Clerk of the United States Circuit Court for the Eastern District of Virginia, Joseph P. Brady Deputy Clerk of the United States District Court for the Eastern District of Virginia.

MORGAN TREAT,
United States Marshal.

Marshal's Fees for service $6.00.

Further executed this 23rd day of July 1906 by delivering in person in the City of Richmond, Va. to Morgan Treat United States Marshal for the Eastern District of Virginia, a true copy of the within citation.

MORGAN TREAT,
United States Marshal,
By M. J. ENRIGHT,
Office Deputy Marshal.

Marshal's Fees for service $2.00.

d [Endorsed:] No. —. Circuit Court of the U. S., Eastern District of Virginia. In the Matter of the Petition of Fortesque Whittle for Writs of *Habeas Corpus* and Certiorari. Fortesque Whittle, Appellant, *vs.* Morgan Treat, United States Marshal &c., *et als.*, Appellees. Citation. Filed this 14th day of July, 1906. Joseph P. Brady, Clerk.

1 *Transcript of Record.*

THE UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

At a Circuit Court of the United States for the Eastern District of Virginia, begun and held at the Court Rooms in the Custom House, in the City of Richmond, Virginia, on the first Monday in April, being the second day of the same month, in the year of our Lord one thousand, nine hundred and six.

Present: The Honorable Nathan Goff, Judge of the Circuit Court of the United States for the Eastern District of Virginia.

Among other were the following proceedings, to-wit:

In the Matter of the Petition of FORTESQUE WHITTLE for Writs of *Habeas Corpus* and Certiorari.

FORTESQUE WHITTLE, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

2 *Petition for Writs of Habeas Corpus and Certiorari.*

Filed July 14th, 1906.

In the Circuit Court of the United States for the Eastern District of Virginia.

FORTESQUE WHITTLE, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

To the Honorable the Judges of the Circuit Court of the United States for the Eastern District of Virginia:

The Petition and Complaint of Fortesque Whittle respectfully shows to the Court:

1.

That your petitioner is a citizen of the United States, and is a citizen and resident of the Eastern District of Virginia, and is unlawfully imprisoned and restrained of his liberty by Morgan Treat, United States Marshal for the Eastern District of Virginia, in the City of Richmond, and County of Henrico, in said District. That your petitioner is held by said Marshal under color and claim of authority of the United States, by virtue of a warrant for removal claimed to have been issued under section 1014 of the Revised Statutes of the United States, dated July 14th, 1906, signed by the Honorable Edmund Waddill, Jr., Judge of the District Court of the United States for the Eastern District of Virginia, and has been committed and is detained only under and by virtue of said warrant, and not by virtue of any judgment, decree or final order of any court.

3 On the 14th day of July, 1906, at the said City of Richmond, in said District, complaint in writing signed and sworn to by Morgan Treat, United States Marshal in and for said District, a copy of which is hereto attached, marked "Exhibit A," and made part hereof, was presented to the Honorable Edmund Waddill, Jr., Judge of the District Court of the United States for the said District,

in and by which it was aver-ed that he, the said Morgan Treat, United States Marshal, had good cause to believe and did believe that your petitioner has been indicted by the grand jury of the Circuit Court of the United States in and for the Middle District of Tennessee, for that your petition- on the 8th day of July, 1903, and during the period of time from that date until and on the first day of September, 1905, and being during said period Vice-President of the Virginia-Carolina Chemical Company, a corporation existing under the laws of the State of New Jersey, did, in the said Middle District of Tennessee, unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section 1 of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against restraints and monopolies," and that on the 8th day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, your petitioner did unlawfully conspire with divers other persons and corporations to commit an offense against the United States, to-wit: The offense of engaging in a combination in restraint of trade and commerce among the several States of the United States, all as more fully set out in an indictment filed in the said Circuit Court of the United States in and for the Middle District of Tennessee on May 25th, 1906, a certified copy of which indictment said complaint states was thereto attached and made
4 a part of said complaint, and in and by which said complaint, said complainant did, therefore, charge that your petitioner did commit the said offense against the United States in the manner and form as set forth in said indictment, and did furthermore aver in said complaint upon information and belief, that in pursuance of an order of the said Circuit Court of the United States for the Middle District of Tennessee, a Bench Warrant has been issued from said Court for the arrest of your petitioner and delivered to the Marshal of the said Court, who, after due search, had returned said warrant "Not found" in said Middle District of Tennessee, and that your petitioner is now believed to be within the Eastern District of Tennessee, of which District he is a resident.

And said complainant, said Morgan Treat, United States Marshal, in and by said complaint did therefore pray that your petitioner might be arrested, imprisoned, and removed or bailed, as the case might be, for trial before said Circuit Court of the United States for the Middle District of Tennessee, and further dealt with according to law; all of which will appear from the said complaint, a copy of which is hereto attached as aforesaid, reference thereto being hereby made for greater certainty. And that thereupon, to-wit, on the said 10th day of July, 1906, a warrant for his arrest was issued by the Honorable Edmund Waddill, Jr., Judge as aforesaid, upon the aforesaid complaint, which came to the hands of the said Morgan Treat, Marshal as aforesaid, and he, in obedience thereto, arrested your petitioner and brought him before the said Honorable Edmund Waddill, Jr., Judge as aforesaid, and made return of said warrant, endorsed thereon, and a copy of said warrant

with the endorsement thereon is hereto attached marked "Exhibit B" and made a part hereof.

3.

That thereupon then and there, the United States Attorney in and for the said Eastern District of Virginia, for and on behalf of the United States, did offer and introduce in evidence to
5 and before the said Judge, in support of the averments of the said complaint of said Morgan Treat, United States Marshal, a certified copy of the said indictment mentioned and referred to in the said complaint. A certified copy of said indictment so offered and introduced in evidence is hereto attached, marked "Exhibit C," and made a part hereof, and the identity of your petitioner with and as the said Fortesque Whittle mentioned and referred to in said indictment as one of the defendants therein, having been then and there admitted by your petitioner, the Government, the United States of America, introduced or offered no other or further proof or evidence in support of the said complaint or of the averments therein; but rested its case upon the said hearing of the said complaint before the said Judge.

4.

That thereupon, then and there, your petitioner, by his counsel, proceeded to offer, and offered, proof and evidence by witnesses then and there present to show that your petitioner did not within the said Middle District of Tennessee, on the 8th day of July, 1903, or during the period between the 8th day of July, 1903 and the 1st day of September, 1905, or at any other time, engage in the said alleged conspiracies in the said indictment mentioned, or any or either of them, or at any time or at any place, join in or assent to the said alleged conspiracies, engaged in or entered upon in said Middle District of Tennessee, or any or either of them, or at any time do any act in the Middle District of Tennessee in furtherance of, or to effect the object of said alleged conspiracies engaged in in said Middle District of Tennessee, or any or either of them. Thereupon, then and there, the Counsel for the Government, upon the said hearing, did object to the introduction on the behalf of your petitioner of the said evidence or any evidence or proof tending to con-
6 tradict or controvert the respective averments, or any or either of them in the said indictment and in the respective counts thereof, viz., that your petitioner did engage*d* in the said alleged conspiracy in said indictment mentioned and referred to, in the said Middle District of Tennessee, in manner and form as in the said indictment in that behalf aver-ed, or to contradict or controvert or disprove any of the averments in the said indictment contained,—on the ground, then and there stated, that upon the said hearing of said complaint, the said certified copy of the said indictment was conclusive evidence of every fact therein aver-ed to sustain and prove upon the said hearing the said complaint of the said Morgan Treat, United States Marshal, and the averments thereof, and the probable cause of the commission by

your petitioner of the said supposed offenses in the said indictment mentioned and of any and every of them in the manner and form as in the said indictment aver-ed, and in that behalf, your petitioner then and there took the witness stand and demanded to be sworn as a witness in his own behalf, but the Counsel for the Government objected, and the objection was by said Judge sustained, and he was not permitted to be sworn or to testify.

5.

That thereupon, then and there, your petitioner by his counsel stated to the Judge that he would prove, and then and there his said counsel offered to prove by your petitioner as a witness and by other witnesses then and there present, the following facts, which facts are true, that is to say, that he was not on the eighth day of July, 1903, or during the period of time between the eighth day of July, 1903, and the first day of September, 1905, in the State of Tennessee, or the Middle District of Tennessee, and that he has not been in the Middle District of Tennessee or the State of Tennessee since June 1900; that he did not enter, assent to, join or engage in the
7 conspiracies in the indictment mentioned, or any of them within the Middle District of Tennessee at the time mentioned therein, or at any other time; that he did not within the period mentioned, or at any other time within the Middle District of Tennessee do any act or thing to promote or further the said conspiracies in the indictment mentioned or any of them, or to effect the object or purposes thereof; that he did not at any time or any place join, assent to, enter or engage in the conspiracies, or any of them, engaged in in the Middle District of Tennessee, alleged or aver-ed in the said indictment.

6.

That the United States Attorney, on behalf of the Government, then and there objected to the introduction or reception by the said Judge of the said evidence so offered on behalf of your petitioner, and to each and every part thereof, on the ground hereinbefore stated, which objection was then and there sustained by the Court, on the ground that the said certified copy of the said indictment so introduced on behalf of the Government, the identity of your petitioner as aforesaid being admitted by your petitioner as aforesaid, was conclusive evidence of the existence of every fact stated in the indictment, including the averments that the conspiracies alleged in the said indictment were engaged in in the Middle District of Tennessee, and that therefore said evidence or any evidence offered by and on behalf of your petitioner to controvert, contradict or disprove the averments of the said indictment in that behalf, or any or either of them, was incompetent and inadmissible; and the said Judge, then and there, on the grounds aforesaid, excluded and refused to receive said evidence so offered on behalf of your petitioner, or any part thereof, to which ruling of the Judge, your petitioner then and there, by his counsel, duly excepted.

8 7.

That thereupon the said Judge, upon the complaint and upon the evidence so introduced for and on behalf of the Government as aforesaid, made and signed a certain order reciting his said rulings as aforesaid and ordering as in said order appears, which said order is as follows:

THE UNITED STATES OF AMERICA,
Eastern District of Virginia:

THE UNITED STATES
vs.
FORTESQUE WHITTLE.

This is an application under the provisions of section 1014 of the United States Revised Statutes for a warrant for the removal of Fortesque Whittle to the Middle District of Tennessee and comes before me as follows:

The District Attorney for this District, together with Mr. E. T. Sanford, Counsel for the United States, presented to me, a verified complaint of Morgan Treat, United States Marshal for this District, with the certified copy of an indictment filed on May 25th, 1906, in the Circuit Court of the United States for the Middle District of Tennessee in the case of the United States *vs.* Virginia-Carolina Chemical Company and others defendants, including among such defendants the said Fortesque Whittle.

Said complaint and copy of said indictment are made parts of this order.

Upon the exhibition of this indictment and affidavit and the *ex parte* motion of the counsel for the United States, I made an order for the arrest of said Fortesque Whittle and his production before me.

This order was duly executed by the said Marshal, who arrested the said Fortesque Whittle and brought him before me in Richmond on this 14th day of July, 1906, as shown by his return.

9 When the accused was so brought before me it was moved by the counsel for the United States that inasmuch as the indictment charged offenses against the United States triable in the Circuit Court of said United States for the Middle District of Tennessee, and the identity of the defendant was admitted, that an order be forthwith made for the commitment of said Fortesque Whittle for trial before the said Circuit Court.

This motion was made upon the certified copy of the indictment without any further testimony, the identity of the party arrested and brought before me with the Fortesque Whittle mentioned in the indictment being admitted.

And thereupon the defendant, Fortesque Whittle offered himself as witness in his own behalf, and being about to be sworn, the United States, by its counsel, thereupon objected to the witness being sworn, or to any testimony being given in rebuttal of the indictment in

these proceedings, on the ground that the identity of the defendant being admitted, inasmuch as the indictment on its face charges offenses against the United States committed and triable in the jurisdiction in which the defendant stands indicted, no evidence is admissible here to impeach the indictment, and the order of commitment should be made without other proof.

The defendant's counsel thereupon offered to prove by the defendant, and other witnesses then and there present, that the Circuit Court for the Middle District of Tennessee had no jurisdiction over the person of said defendant touching the offense charged in said indictment, in that defendant and said other witnesses would, if permitted, testify that he was not on the eighth day of July, 1903, or during the period of time between the eighth day of July, 1903 and the first day of September, 1905, in the State of Tennessee, or the Middle District of Tennessee, and that he has not been in the Middle District of Tennessee or the State of Tennessee since
10 June, 1900; that he did not enter, assent to, join or engage in the conspiracies in the indictment mentioned, or any of them within the Middle District of Tennessee at the time mentioned therein, or at any other time; that he did not within the period mentioned, or at any other time within the Middle District of Tennessee do any act or thing to promote or further the said conspiracies in the indictment mentioned or any of them, or to effect the object or purposes thereof; that he did not at any time or any place join, assent to, enter or engage in the conspiracies, or any of them, engaged in in the Middle District of Tennessee alleged or averred in the said indictment.

Thereupon Counsel for the Government renewed its objections as aforesaid.

After hearing counsel on both sides the Court announced its conclusions as follows:—

"The conclusion reached by the Court is that in a proceeding for the arrest and the removal of persons charged with a violation of the laws of the United States pursuant to section 1014 of the Revised Statutes of the United States, before a United States District Judge, sitting in the State of Virginia, in which State there no longer exists the right of a preliminary examination upon a crime charged prior to the trial upon the merits, when said Judge is called upon to act as well in the matter of the apprehension of such persons, as in their removal to the jurisdiction in which they have been indicted, that upon the Government's presentation of a sufficient indictment regularly found by a grand jury in a court of the United States, properly charging the commission of an offense within the district in which such indictment is found, coupled with proof of the identity of the person indicted, it is its duty to properly bail such person for appearance before the court in which he is indicted, ar cause him to be removed thereto."

11 Therefore it was ordered that the testimony offered is inadmissible, and will not be received, and I therefore made the following order:

UNITED STATES OF AMERICA,
Eastern District of Virginia, sct:

The within named Fortesque Whittle having been brought before me, and identified; and it appearing by a duly authenticated copy of an indictment that he stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," for violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for violation of section 5440 of the Revised Statutes of the United States, it is ordered that the said Fortesque Whittle give bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial before said Court under the said indictment; or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee, to be there dealt with according to law.

Richmond, Va., July 14th, 1906.

(Signed) EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

And after said order had been made and the defendant declined to give bond, the Counsel for the United States moved that the warrant do issue directed to the Marshal of this District for the imprisonment and removal of the said Fortesque Whittle to the
12 Middle District of Tennessee, and his delivery to the custody of the United States Marshal of that District.

On such motion counsel for the said Fortesque Whittle objected and again offered the said Fortesque Whittle as a witness, together with the other witnesses herebefore referred to, to establish the same matters and facts as hereinbefore stated with regard to the objection to the order for the commitment of the said Fortesque Whittle, which testimony was again offered and was again objected to by the counsel for the United States on the same grounds above set forth, and on the further ground that these matters could not now be inquired of in this stage of the proceedings, and was again excluded by the Court, to all of which counsel for the said Fortesque Whittle duly excepted and had the exceptions noted and entered.

(Signed) EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

I therefore issued a warrant directed to the Marshal as follows:

Warrant of Imprisonment and Removal.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The President of the United States to the United States Marshal of the Eastern District of Virginia, Greeting:

Whereas it has been made to appear that Fortesque Whittle stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled: "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," for violation of section one of the act of Congress entitled "An
13 Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States; and whereas the said Fortesque Whittle having been brought before me, and identified; and a certified copy of said indictment furnishing probable cause to believe him guilty as therein charged, and whereas it was thereupon ordered by me that said defendant give bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial under said indictment, or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee to be there dealt with according to law; and the said defendant having failed and refused to give bail as required, therefore;

You are hereby commanded in the name and by the authority of the said United States to imprison the said Fortesque Whittle in accordance with law, and that with all convenient speed you remove him hence to the said Middle District of Tennessee and there surrender him to the Marshal of that District, there to be dealt with according to law.

(Signed) EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

Richmond, Va., July 14th, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

Richmond, Va., July 14th, 1906.

8.

Your petitioner further says that he is advised, and he charges and submits, that under and by virtue of Clause 3, of Section 2, of Article 3, of the Constitution of the United States, and of the Sixth Amendment to the said Constitution, your petitioner is entitled to be tried and can only be indicted and tried for any alleged
14 offenses against the laws of the United States, in the State and District in which the offense, which the indictment charges, was committed; that the said supposed offenses in the said indict-

ment mentioned and charged, were not, nor was any or either of them, committed in the said Middle District of Tennessee; that none of the alleged acts, transactions, matters or things which are in the said indictment mentioned or referred to as being and constituting the supposed engaging by this defendant in the said alleged conspiracies in the said indictment referred to, or any or either of them, were done or held or took place within the said Middle District of Tennessee, and no alleged act, transaction, matter or thing, in the said indictment mentioned or referred to as being the doing by this defendant of an act to effect the obect of said conspiracy was done or held or took place within the said Middle District of Tennessee; that he was not on the eighth day of July, 1903, or during the period of time between the eighth day of July, 1903, and the 1st day of September, 1905, in the State of Tennessee, or the Middle District of Tennessee, and that he had not been in the Middle District of Tennessee since June, 1900; that he did not enter, assent to, join, or engage in the conspiracies in the indictment mentioned or any of them within the Middle District of Tennessee at the time mentioned therein, or at any other time; that he did not within the period mentioned, or at any other time, within the Middle District of Tennessee, do any act or thing to promote or further the said conspiracies in the indictment mentioned or any of them, or to effect the object or purposes thereof; that he did not, at any time or place, join, assent to, enter, or engage in the conspiracies, or any of them, engaged in in the Middle District of Tennessee, alleged or aver-ed in the said indictment, or do any act in pursuance of the said alleged conspiracies in the said indictment mentioned, or any or either of them, in furtherance of the said alleged conspiracies in said indictment mentioned, or any or either of them engaged in in the Middle District of Tennessee, or to effect the object of the same, or as an act on the part of your petitioner of engaging in the same.

9.

That thereupon, the United States Attorney moved the commitment of your petitioner to the Marshal of the said District for removal to the Middle District of Tennessee for trial upon the indictment in the United States Circuit Court for said District, and the said Attorney for the United States thereupon made a motion before the Honorable Edmund Waddill, Jr., Judge, for the issuance of a warrant for the removal of your petitioner to the Middle District of Tennessee for trial as aforesaid in the United States Circuit Court for said District upon the said indictment, and the said motion was allowed, and said warrant was in pursuance thereof issued by the said Judge, and a copy thereof is embraced in the order of the said Judge hereinbefore recited as and made a part hereof. That thereupon the said Marshal of the Eastern District of Virginia, to whom the said warrant was directed, took your petitioner into custody upon the said warrant and now holds your petitioner thereunder and threatens to take and remove your petitioner to the Middle District of Tennessee, as directed by the said warrant and will do so, unless your Honor shall issue the writ of *Habeas Corpus* herein prayed for. Your petitioner further says that in case your pe-

titioner is removed under the said warrant to the said Middle District of Tennessee for trial upon said indictment and is there held for trial and tried upon said indictment, your petitioner will not be tried within the District in which the said alleged offenses charged in the said indictment were committed, as required by the Sixth
16 Amendment to the Constitution of the United States, and by Clause 3, of Section 2, of Article 3 of said Constitution, and will be tried in violation of his rights under said provisions of the said Constitution. Your petitioner further says that he is advised, and he charges, that the said indictment does not charge the commission by your petitioner of any offense against the Laws of the United States, and that same is in that behalf insufficient and void.

10.

That the imprisonment and detention of your petitioner is without authority of law, and the said proceedings before said United States District Judge are illegal and the said warrant of removal was illegally issued and in violation of Article 3, Section 2, of the Federal Constitution, and of the Sixth Amendment to the said Constitution; and that then and there by the said rulings of the said District Judge, in the exclusion of the said evidence and in holding that the said certified copy of the indictment was conclusive evidence as aforesaid, and in refusing to permit your petitioner to introduce any evidence on his behalf, as aforesaid, your petitioner was deprived of rights secured to him by the said provisions of the said Constitution and by section 1014 of the Revised Statutes, and was and is by said Morgan Treat, United States Marshal, deprived of his liberty without due process of law.

Wherefore your petitioner prays that a writ of *Habeas Corpus* be issued, directed to the said United States Marshal of the Eastern District of Virginia, who has your petitioner in custody, demanding him to bring the body of your petitioner before this Court forthwith; and further that a writ of *Certiorari* be directed to the said Honorable Edmund Waddill, Jr., Judge as aforesaid, commanding that he return all proceedings against this petitioner to this court forth-
17 with, for such action as may be proper in the premises.

FORTESQUE WHITTLE,
JOHN PICKRELL, *Att'y.*

H. A. M. SMITH,
JAMES C. BRADFORD,
JOHN J. VERTREES,
MARCELLUS GREEN,
Of Counsel.

UNITED STATES OF AMERICA,
Eastern District of Virginia, County of Henrico, ss:

Fortesque Whittle being duly sworn, deposes and says that he has read the foregoing petition, and knows the contents thereof, and that the same is in all respects true.

FORTESQUE WHITTLE.

Sworn to and subscribed to before me this 14th day of July, 1906.

JOSEPH P. BRADY,
Clerk U. S. Circuit Court.

18 EXHIBIT A.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

On this 14th day of July, 1906, at the City of Richmond, in the said District, before the Honorable Edmund Waddill, Jr., Judge of the District Court of the United States of America for the said District, comes Morgan Treat, United States Marshal in and for the said District, and upon his oath complains and says: that he has good cause to believe and does firmly believe that Fortesque Whittle of Petersburg, Virginia, stands indicted by the grand jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said Fortesque Whittle on the eighth day of July in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, being during said period Vice-President of the Virginia-Carolina Chemical Company, a corporation existing under and by the laws of the State of New Jersey, did in the said Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said Fortesque Whittle did unlawfully conspire with divers other persons and corporations to commit an offense against the United States, to-wit, the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States, all as more fully set out in an indictment

19 filed in the said Circuit Court of the United States in and for the Middle District of Tennessee on May 25, 1906, in cause No. 963, entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al,*" a certified copy of which indictment is hereto attached and made a part of this complaint; and complainant therefore charges that the said Fortesque Whittle did commit the said offenses against the United States in manner and form as set forth in said indictment.

Complainant furthermore avers upon information and belief that in pursuance of an order of said Circuit Court of the United States for the Middle District of Tennessee a bench warrant has been issued from said Court for the arrest of said Fortesque Whittle and delivered to the Marshal of said Court, who after due search has returned said warrant "Not found" in said Middle District of Tennessee; and that said Fortesque Whittle is now believed to be within the Eastern District of Virginia, of which district he is a resident.

Wherefore this complainant prays that the said Fortesque Whittle may be arrested and imprisoned and removed or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee, and further dealt with according to law.

(Signed) MORGAN TREAT, *Marshal.*

Subscribed and sworn to before me by the above named Morgan Treat the day and year first above written.

EDMUND WADDILL, JR., *Judge.*

20 EXHIBIT B.

UNITED STATES OF AMERICA, *Eastern District of Virginia, set:*

To the Marshal of the Eastern District of Virginia, Greeting:

Whereas complaint in writing, on oath, has been made to me charging that Fortesque Whittle, of Petersburg, Virginia, stands indicted by the grand jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said Fortesque — on the eighth day of July, in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, did in the Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said Fortesque Whittle did unlawfully conspire with divers other persons and corporations to commit an offense against the United States, to-wit, the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States; and application has been made to me that the said Fortesque Whittle may be arrested and imprisoned and removed or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee;

Now, therefore, you are hereby commanded to arrest the said Fortesque Whittle if he be found within your said District and bring him forthwith before me at my Chambers in Richmond, in order that he may be dealt with according to law.

EDMUND WADDILL, JR.,
District Judge.

Richmond, July 14, 1906.

21 Pursuant to the within writ, I have taken the defendant Fortesque Whittle into custody and now have him before Hon. Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia.

MORGAN TREAT,
United States Marshal.

July 14th, 1906.

22 EXHIBIT C.

In the Circuit Court of the United States of America for the Middle District of Tennessee, of the April Term, in the Year of Our Lord Nineteen Hundred and Six.

MIDDLE DISTRICT OF TENNESSEE, *sct:*

The grand jurors for the United States of America, inquiring for the Middle District of Tennessee, upon their oath present, that before and on the eighth day of July, in the year of our Lord nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year of our Lord nineteen hundred and five, the following named corporations, respectively organized and existing under and authorized by the laws of the several States and of the foreign country here named in connection with them, and hereafter in this indictment called corporation defendants, to wit, the Virginia-Carolina Chemical Company, of New Jersey, Armour and Company, of Illinois, the Acme Manufacturing Company, of North Carolina, the Alabama Chemical Company, of New Jersey, the Anderson Phosphate & Oil Company, of South Carolina, the Ashepoo Fertilizer Company, of South Carolina, the Blackshear Manufacturing Company, of Georgia, the Etiwan Fertilizer Company, of South Carolina, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, The Furman Farm Improvement Company, of Georgia, the Goulding Fertilizer Company, Limited, of Great Britain and Ireland, The Goulding Fertilizer Company, of Florida, the Gulfport Cotton Oil, Fertilizer & Manufacturing Company, of Georgia, the Home Mixture Guano Company, of Georgia, the Jackson Fertilizer Company, of Mississippi, the Marietta Fertilizer Company, of Georgia, the Meridian Fertilizer Factory, of Mississippi, the National Fertilizer Company, of Tennessee, the New Orleans Acid and Fertilizer Company, of New Jersey, the Old Dominion Guano Company, of Georgia, the Planters Chemical Company, of Alabama, the
23 Read Phosphate Company, of West Virginia, the F. S. Royster Guano Company, of Virginia, the Savannah Guano Company, of Georgia, the Southern States Phosphate and Fertilizer Company, of Georgia, the Standard Chemical & Oil Company, of Alabama, the Standard Guano and Chemical Manufacturing Company, of Louisiana, Swift & Company, of Illinois, the Tennessee Chemical Company, of Tennessee, and the Tennessee Valley Fertilizer Company, of Alabama, and certain firms, to wit, the firm of A. D. Adair and McCarty Brothers and the firm of Wilcox, Ives & Company, did carry on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereafter in this indictment called the States of the conspiracy, as wholesale dealers in complete and alkaline fertilizers and in acid phosphates, nitrates, and potash salts suitable for fertilizers, which then were useful and valuable

articles of merchandise, indispensable for use on the soil of the said States of the conspiracy in order that the staple crops of those States might be raised therefrom; that the following named persons, hereafter in this indictment called individual defendants, to wit, Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, of the said Virginia-Carolina Chemical Company, and J. Rice Smith, agent and manager of the said Virginia-Carolina Chemical Company, and president of the Georgia Chemical Works hereinafter mentioned, Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, Fred G. Brown, president and treasurer of the said Anderson Phosphate & Oil Company, Frank Burbidge, president, and William J. McCormack, treasurer, of the said Etiwan Fertilizer Company, George Braden, president of the said Federal Chemical Company, of Delaware, and also of the said Federal Chemical Company, of Kentucky, Augustus D. Adair and James D. McCarty, officers and agents of the said Furman Farm Improvement Company and members of the said firm of A. D. Adair and McCarty Brothers, William DeC. Kessler, secretary and treasurer of the said Goulding Fertilizer Company, Limited, James G. Tinsley, president of the said Marietta Fertilizer Company and vice-president of the said Tennessee Chemical Company, William D. Rhea, general manager of the said National Fertilizer Company, William L. Peel, president of the said Old Dominion Guano Company, Abram C. Read, vice-president and general manager, and Isaac Mayo Read, agent, of the said Read Phosphate Company, Frank S. Royster, president, and Charles F. Bur-
24 roughs, vice-president, of the said F. S. Royster Guano Company, A. J. Ives, whose Christian name is to the said grand jurors unknown, secretary and treasurer of the said Savannah Guano Company and a member of the said firm of Wilcox, Ives & Company, T. Porter Fleming, vice-president of the said Southern States Phosphate and Fertilizer Company, and T. Garland Tinsley, president and treasurer of the said Tennessee Chemical Company, in their said several capacities as officers, managers, agents, and attorneys of the said corporation defendants and members of the said firms, and on behalf of those corporations and firms, during the period of time in this indictment first aforesaid, did carry on the business aforesaid; that in so carrying on the said business the said defendants, that is to say, the said corporation and individual defendants, did sell and deliver large quantities of the said merchandise within the limits of the said States of the conspiracy from the respective places of business of the said corporation defendants and the said firms, located at different points within those States, to retail dealers in and consumers of such merchandise, in such States respectively, and did also ship large quanti-es of the same from their respective places of business, located in the said States of the conspiracy and also in the States of Virginia, Illinois, and Kentucky, into and through other of the said States than those in which their said places of business were located; that in so carrying on the said busi-

ness and shipping the said merchandise from one of the said States into and through another or others thereof, the said defendants, during the period aforesaid, were engaged in trade and commerce among the States of this Union within the meaning of the Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in so carrying on the said business, trade and commerce, the said Virginia-Carolina Chemical Company and the said Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, and J. Rice Smith, agent and manager, of the said Virginia-Carolina Chemical Company, did make use of and operate a portion of their said business, trade and commerce through each of certain other corporations, to wit, the American Fertilizer Company, of Virginia, the Birmingham Fertilizer Company, of Alabama, the Coweta Fertilizer Company, of Georgia, the Georgia Chemical Works, of Georgia, the Navassa Guano Company, of North Carolina, of either the whole or a majority of the capital stock of which said corporations respectively the said Virginia-Carolina Chemical Company was the owner;

25 that in so carrying on the said business, trade and commerce, the said Armour and Company and the said Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, did make use of and operate all of their said business, trade and commerce through a certain other corporation called the Tuscarora Fertilizer Company, of New Jersey, and a certain trade name, to wit, the trade name of Armour Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Furman Farm Improvement Company and the said firm of A. D. Adair and McCarty Brothers did make use of and operate a portion of their said business trade, and commerce under the trade name of Chickamauga Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Federal Chemical Company, of Delaware, and the said Federal Chemical Company of Kentucky, did make use of, and operate a portion of their said business, trade and commerce through, the names of Century Phosphate Company, Fox Chemical Company, Branch Globe Fertilizer Company, Branch and Tennessee Phosphate Company; that in so carrying on the said business, trade and commerce, the said National Fertilizer Company did make use of, and operate a portion of its said business, trade and commerce through, the corporate name of American Guano Company and the trade name of Nashville Guano Company; that in so carrying on the said business, trade and commerce, the said Read Phosphate Company did make use of, and operate a portion of its said business, trade and commerce through the corporate name of Empire Guano Company; that in so carrying on the said business, trade and commerce, the said F. S. Royster Guano Company did make use of, and operate a portion of its said business, trade and commerce through the trade name of Atlantic Chemical Company and the corporate name of Columbia Guano Company; that in so carrying on the said business, trade and

commerce, the said Swift and Company did make use of, and operate the whole of its said business, trade and commerce through, the trade name of Swift Fertilizer Works; and that in so carrying on the said business, trade and commerce, the said Tennessee Chemical Company did make use of, and operate a portion of its said business, trade and commerce through, the trade name of Continental Fertilizer Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that of the total volume of such business, trade and commerce then so being carried on by the said defendants and their competitors, the said defendants together had and controlled the principal part, that is to say, ninety per centum thereof; and
26 that because the said corporation defendants and the said firms were in fact separate and distinct from each other, they should have conducted their interstate trade and commerce strictly in competition with each other, during the said period, and then would have so conducted the same but for the unlawful conspiracy in restraint of the said business, trade and commerce in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, at and within the said Middle District of Tennessee, in violation of the provisions of said section one of the said Act of Congress, unlawfully did knowingly engage in a conspiracy in restraint of the said business, trade and commerce, so then being carried on by them in the manner aforesaid, whereby the said business, trade and commerce was restrained in the several ways and by the several means now here set forth and described, that is to say:

Competition as to the prices at which the said merchandise was sold and delivered by the said corporation defendants and the said firms in the said States of the conspiracy, which before the period of time in this indictment first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was prevented and destroyed by the said defendant from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them styled "current, reasonable market prices," for the said merchandise so sold and delivered by the said corporation defendants and the said firms in those States, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so fixed and caused to be fixed; which said uniform and non-competitive prices were prices greatly in excess of the prices which but for the said unlawful conspiracy would at such times have prevailed for the said merchandise in the said business, trade and commerce, and were prices therefore unreasonable, and were a tax on the people of the said States of the said conspiracy amounting to a large sum of money, to wit, four million dollars, annually during the continuance of the same.

For and on account of such quantity of the said merchandise as was sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts allotted and caused

to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and
27 delivered in excess, was, by the corporation defendants and firms so selling and delivering the same, paid into a common fund, held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, compensated, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as sold and delivered less than the amounts so allotted to them respectively, so it was not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy that each of the said corporation defendants and of the said firms also paid into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment to be the absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm, in disposing of its said allotment in carrying on the said business, trade and commerce, on its part faithfully should exercise every reasonable effort and due business diligence to maintain the prices so fixed and caused to be fixed as aforesaid and pay into the said fund the sum accruing to the same on account of its said excess sales, in which case an equal amount was returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also made uniform and non-competitive as between all of the said corporation defendants and the said firms, in the said business, trade and commerce, among the said States of the conspiracy.

As a convenient intermediary and common agent between the said corporation defendants and the said firms, respectively and as a means of securing their co-operation in carrying out the said unlawful conspiracy, the said defendants made use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company, Limited, was also allowed and required to collect, hold, use and distribute the said fund
28 arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that, in pursuance of the said unlawful conspiracy,

and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of September, in the year nineteen hundred and three, during the period of time aforesaid, at and within the City of New York, in the State of New York, unlawfully did knowingly deposit with the Continental Trust Company, of the said City of New York, the sum of twenty-six thousand dollars, in connection with the purchase *of* by the said trust company on behalf of the said Virginia-Carolina Chemical Company, and in the name of one Montrose Stuart, a clerk in the office of the said trust company, of twenty-six hundred shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Samuel T. Morgan, on the seventh day of October, in the same year nineteen hundred and three, and during the period of time aforesaid, at and within the said city of New York, in the State of New York, unlawfully did deliver to the said William DeC. Kessler, Vice-President of the said Colonial Development Company, Limited, three checks drawn by the said Virginia-Carolina Chemical Company, one upon the National City Bank, of New York City aforesaid, for eighty thousand dollars, another on the Bank of America, of New York City aforesaid, for fifty thousand dollars, and the other on the National Park Bank, of New York City aforesaid, for thirty-five thousand and four hundred and sixty-eight dollars, aggregating one hundred and sixty-five thousand and four hundred and sixty-eight dollars, as and for a payment, by the said Virginia-Carolina Chemical Company, to the said Colonial Development Company, Limited, of twenty cents a ton on its allotment under the said unlawful conspiracy; he the said Samuel T. Morgan, when and where he so as aforesaid delivered the said checks to the said William DeC. Kessler, well knowing the character and purpose of the same, and well knowing that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as acts on their parts respectively of engaging in the same, the said Samuel T. Morgan,
29 Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, on the seventeenth day of September, in the year nineteen hundred and three, and during the period aforesaid, at the said City of New York, in the said State of New York, unlawfully did meet together to discuss and further the object of the said unlawful conspiracy; they the said Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred G. Brown,

Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, when and where they so as aforesaid met together, each well knowing the character and purpose of the said meeting, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank E. Wilcox, on the first day of November, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did deliver to one W. W. Perkins, Secretary of the said American Fertilizing Company, a certain document, too voluminous to be here set forth, stating certain prices and terms of sale, fixed in pursuance of the said unlawful conspiracy, for the said fetilizer merchandise, in the States of North Carolina, South Carolina, Georgia, Florida, Alabama and Tennessee, for the spring season of the year nineteen hundred and four; he the said Frank E. Wilcox at the time and place when and where he so as aforesaid delivered the said document to the said W. W. Perkins, well knowing the character of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, and during the period of time aforesaid, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, and during the period aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, and during the period of time aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at the City of Nashville, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, a certain notice of shipment, partly written and partly printed, in the words and figures following, that is to say:

"The Armour Fertilizer Works
Owned and operated by
Armour & Company.

Prudential Building,
Atlanta, Ga.

Duplicate.
To be Mailed with Bill of
Lading to Customer.

No. 612
March 10", 1905.

31 We have this day shipped from Nashville, Tenn. storage

To Bramlitt Hdw Co.
Corinth, Miss.

Charge to S. D. Bramlitt. Address same.

No. Bags.	Weight of bags.	Brand.	Tons.
400	100	King Cotton 8.2.2	20

Order No. 4613.

Bill of lading herewith. Invoice will be mailed from Chicago.
Above quantities shipped 3 10 1905. Freight Terms.....
Car No. 13619. Via L. & N.
Charges prepaid $48.00.

THE ARMOUR FERTILIZER WORKS,
Per ALEX. LESLIE."

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Austin B. Carpenter, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Assistant Secretary of the said Colonial Development Company, unlawfully did sign his name, to wit, "A. B. Carpenter, Asst. Secy." on the face of a certain stock certificate, to wit, certificate No 28, showing the ownership by one Thomas M. Green of fifty-one shares of the capital stock of the said Colonial Development Company; he the said Austin B. Carpenter, at the time and
32 place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his said act to be done in pursuance and to effect the object of the said conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles H. MacDowell, on the twelfth day of January, in the year nineteen hundred and five, and during the period of time aforesaid, at and within the city of Chicago, in the State of Illinois, unlawfully did sign his name, to-wit, "C. H. MacDowell," under the name of the Armour Fertilizer Works, and after the word "by" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Armour and Company, under the trade name of "Armour Fertilizer Works," offered to furnish and deliver at Corinth, in the State of Mississippi to one S. D. Bramlitt, twenty tons of the fertilizer merchandise aforesaid; he the said Charles H. MacDowell, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of gaging in the same, the said Alabama Chemical Company, on the the first day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the city of Wilmington, in the State of North Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of six hundred and twenty

dollars for sixty-two shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Alabama Chemical Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Montgomery, in the State of Alabama, unlawfully did knowingly deliver its certain check drawn upon the Merchants and Planters-Farley National Bank, Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of William DeC. Kessler, as payment for forty-two shares of the capital stock of the said Colonial Development Company, Limited;

33 And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Anderson Phosphate and Oil Company, on the twenty-ninth day of August, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Anderson, in the State of South Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of five hundred and eighty dollars for fifty-eight shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly buy from the Carolina Savings Bank, Charleston, South Carolina, a draft upon the Citizens National Bank, of New York City, for the payment of the sum of seven thousand nine hundred and forty-nine dollars and forty-three cents to the order of one Frank E. Taylor, Vice-President and General Manager of the said Ashepoo Fertilizer Company;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and *and* during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly cause the said Frank E. Taylor to endorse the check last above mentioned payable to the order of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Blackshear Manufacturing Company, on the seventeenth day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Blackshear, in the State of Georgia, unlawfully did knowingly deliver to the Atlantic Coast Line Railroad Company six tons of the fertilizer merchandise aforesaid, consigned and to be shipped

to the firm of E. J. Blume & Company, at Live Oak, in the State of Florida;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Etiwan Fertilizer Company, on the fourteenth day of December, in the year nineteen hundred and
34 three, and during the period of time aforesaid, at and within the town of Cairo, in the State of Georgia, by and through one P. H. Seabrook, its agent, unlawfully did knowingly offer and agree to furnish and deliver to the firm of Wight Brothers, of Cairo aforesaid, thirty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank Burbidge, on the first day of July, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Charleston, in the State of South Carolina, having then and there in his hands a certain check, dated the thirtieth day of June, in the same year nineteen hundred and four, drawn by the said Alabama Chemical Company upon the Continental National Bank of Chicago, for the payment of eleven hundred and forty-two dollars and ninety-seven cents to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Pay to order of People's National Bank, Colonial Development Co., Ltd., F. Burbidge, Pres."; he the said Frank Burbidge then and there, to wit, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William J. McCormack, on the ninth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, having then and there in his hands a certain check dated the fifth day of September, in the same year, drawn by the said New Orleans Acid & Fertilizer Company, upon the Louisiana National Bank of New Orleans, for the payment of seven hundred and fifty dollars to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Colonial Developm't Co., Frank Burbidge, Sec. & Treas., per Wm. J. McCormack"; he the said William J. McCormack, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of en-

gaging in the same, the said Federal Chemical Company, of
35 Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the said State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, and during the period of time aforesaid, at Springfield afore-
36 said, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff & Williams, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Goulding Fertilizer Company, Limited, on the twenty-fifth day of November, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the

town of Cullman, in the State of Alabama, by and through one W. E. Craig, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one John Sutterer, at Cullman aforesaid, three hundred and seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the sixth day of September, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Pensacola, in the State of Florida, having then and there in his hands a certain check, dated the fifth day of September, in the same year nineteen hundred and three, drawn by the said Alabama Chemical Company upon Merchandise Merchants and Planters-Farley National Bank of Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of W. DeC. Kessler, unlawfully did sign his name, to wit, "W. DeC. Kessler," upon the back of the said check next below the written words "Pay to the order of Colonial Development Co."; he the said William DeC. Kessler then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the back of the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the said fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Vice-President of the said Colonial Development Company, unlawfully did sign his name, to wit, "W. DeC. Kessler, V. P." on the face of the said stock certificate in the name of Thomas M. Green; he the said William DeC. Kessler, at the time and place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his act to be done in pursuance and to effect the object of
37 the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Gulfport Cotton Oil Fertilizer and Manufacturing Company, on the twenty-seventh day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-four hundred dollars for and in respect of twelve thousand tons of the fertilizer merchandise aforesaid, allotted to the said Gulfport Cotton Oil, Fertilizer and Manufacturing Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Home Mixture Guano Company, on a day in the year nineteen hundred and three to the said grand jurors

unknown, and during the period of time aforesaid, at and within the City of Columbus, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Jackson Fertilizer Company, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Jackson, in the State of Mississippi, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Marietta Fertilizer Company, on the twenty-first day of July, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by and through one L. W. Reeves, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one James A. Boyd, at Jonesboro aforesaid, seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said James G. Tinsley, on the
38 third day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Nashville, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley; he the said James G. Tinsley, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Meridian Fertilizer Factory, on the seventh day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Cullman, in the State of Alabama, by its agent E. L. Robbins, unlawfully did knowingly offer to furnish to C. A. Steifelmeyer one hundred and fifty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said National Fertilizer Company, on the

second day of March, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge; he the said William D. Rhea, then
39 and there, to wit, at the time and place when and where he so directed and required the said E. W. Connell to sign his name as aforesaid to the said check, well knowing the nature and contents of the said check, and that his said direction and requirement were in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid; he the said William D. Rhea then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the said document, well knowing the character of the same, and well knowing his said act to be one done in pursuance of and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said New Orleans Acid & Fertilizer Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did

knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars for seventy-five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Old Dominion Guano Company, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-six hundred and twenty dollars, for and in respect of thirteen thousand one hundred tons of the fertilizer merchandise aforesaid, allotted to the said Old Dominion Guano Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William L. Peel, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did sign his name, to wit, "W. L. Peel, Prest.," to a certain check, to wit, a check drawn by the Maddox-Rucker Banking Company upon the National Park Bank, New York, for the payment of twenty-six hundred and twenty dollars to the order of the said Colonial Development Company, Limited; he the said William L. Peel, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Planters Chemical Company, on the thirtieth day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Talladega, in the State of Alabama, unlawfully did knowingly pay the said Colonial Development Company, Limited, the sum of fifty dollars for five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Read Phosphate Company, on the fifth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Hartselle, in the State of Alabama, unlawfully did knowingly offer to sell and deliver to one S. E. Stewart, at that place, forty to fifty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and

three, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too
41 voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid; he the said Abram C. Read, then and there, to wit, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved, Nashville Tenn. Dec. 6 1904," and above the word "Manager," upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof, offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid; he the said Abram C. Read then and there, to wit, at the time and place when and where he so as aforesaid signed his name to the last mentioned document, well knowing the character and contents of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said F. S. Royster Guano Company, on the thirtieth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine thousand three hundred and fourteen dollars and seventy-four cents, on account of such merchandise sold and delivered by the said F. S. Royster Guano Company in excess of its allotment under the aforesaid unlawful conspiracy;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles F. Burroughs, on the twenty-fifth day of March, in the year nineteen hundred and four,
42 and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did sign

his name, to wit, "C. F. Burroughs," under the word "countersigned" and above the words "Vice-President" upon the face of a certain document, partly written and partly printed, too voluminous to be here set forth in full, wherein and whereby the said F. S. Royster Guano Company and he the said Charles F. Burroughs, as Vice-President thereof, offered to sell to one J. W. Carter, and to deliver to him at Maxton, in the State of North Carolina, ten tons of the fertilizer merchandise aforesaid; he the said Charles F. Burroughs, at the time and place when and where he so as aforesaid signed his name to the said document, well knowing the character and contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Savannah Guano Company, on the second day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did knowingly pay to the said Frank Burbidge the sum of nine hundred and forty dollars for ninety-four shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said A. J. Ives, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did sign his name, to wit, "A. J. Ives, Secty. & Treas." to a certain check, to wit, a check drawn by the Savannah Guano Company upon the Merchants National Bank, Savannah, Georgia, for the payment of three thousand one hundred and forty dollars to the order of New York Exchange; he the said A. J. Ives, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Southern States Phosphate and Fertilizer Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of the time afore-
43 said, at and within the City of Augusta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine hundred and sixty dollars for ninety-six shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Chemical and Oil Company, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the

town of Troy, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand dollars for and in respect of one-half of forty thousand tons of the fertilizer merchandise aforesaid allotted to the said Standard Chemical and Oil Company, as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Guano and Chemical Manufacturing Company, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand seven hundred and seventy-four dollars and seventy-seven cents as a partial payment for and in respect of the fertilizer merchandise aforesaid, allotted to the said Standard Guano and Chemical Manufacturing Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Swift & Company, on the first day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by its agent, J. Z. Elliott, unlawfully did knowingly offer to furnish to one W. P. Diehl thirty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

And that, further in pursuance of the said unlawful con-
44 spiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes & Bro., at Oxford, Alabama, a certain letter of the tenor following, to wit:

T. G. Tinsley, Pres't & Treas. Allen Hardison, Sec'y.

Tennessee Chemical Company, Manufacturers and Importers of Ox Fertilizers.

NASHVILLE, TENN., *May* 17–'05.

Messrs. D. P. Haynes & Bro., Oxford, Ala.

DEAR SIRS: I am in receipt of your favor of the 16th and beg to state we could not allow any discount further than the 5 % for cash

settlement. We will be glad to have you settle in cash on this basis if you desire to do so, but are sorry to state we are not in a position to offer you any further discount.

Yours truly, T. G. TINSLEY, *President;*

he the said T. Garland Tinsley then and there, to wit, at the time and place when and where he so as aforesaid caused the said letter to be written and sent as aforesaid, well knowing that the same was so written and sent in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part in engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Company, James G. Tinsley. By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee
45 Chemical Company upon the Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley; he the said T. Garland Tinsley, at the same time and place when and where he so as aforesaid wrote the said endorsement on the back of the said check, well knowing the contents of the same, and that his said act was done in pursuance of and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Valley Fertilizer Company, on the second day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Florence, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars, as a partial payment for and in respect of fertilizer merchandise, aforesaid, allotted to the said Tennessee Valley Fertilizer Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on their parts respectively, of engaging in the same, the said Frank Burbidge, Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson, during the period of time aforesaid, at the City of New York, in the State of New York, the City of Washington, in the District of Columbia, Old Point Comfort and Hot Springs, in the State of Virginia, St. Augustine, in the State of Florida, and French Lick Springs, in the State of Indiana, unlawfully did as officers, directors and attorney of the said Colonial Development Company, Limited,

meet together for the purpose of discussing and attending to the affairs of the said Colonial Development Company, Limited; they the said Frank Burbidge, Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson when and where they so met together aforesaid, well knowing the purpose of such meetings, and well knowing their acts in the premises to be acts in pursuance and to effect the object of the said unlawful conspiracy, and that the same were done as acts on their parts respectively of engaging in the said unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, during the period of time aforesaid, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form aforesaid, unlawfully did engage in a conspiracy in
46 restraint of trade and commerce among the several States;

Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

Second Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the first count described, and were so engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord, nineteen hundred and three at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the grand jurors unknown, and engage in a conspiracy, among themselves and with such other unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid; which said unlawful conspiracy in this count mentioned then and there was a conspiracy for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described; that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the

said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing and causing to be fixed, uniform and non-competitive prices, by them to be styled "current, rea-
47 sonable market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such times prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum ther-of during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be the absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its excess

sales, in which case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of pay-
48 ment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their cooperation in carrying out the said unlawful conspiracy, the said defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, and as being acts on the part of the said corporation and individual defendants respectively of engaging in that conspiracy, are now here in this count charged to be acts by the same corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned, and to have been acts on the part of the said corporation and individual defendants respectively of engaging in the last-named unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a con-
49 spiracy in restraint of trade and commerce among the several States; against the peace and dignity of the said United

States, and contrary to the form of the statute of the same in such case made and provided.

THIRD COUNT.

And the grand jurors, aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the said first count described, and so were engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the said United States, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the said United States, to wit, the offense of engaging in a combination, among themselves and with such other unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid, which said unlawful conspiracy in this count mentioned then and there was a conspiracy to engage in a combination for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described, that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them to be styled "current, reasonable market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be

prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such times prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful combination and ninety per centum thereof during the second year; it being a further element of the said unlawful combination in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on the said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the
51 same on account of its excess sales, in which case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their cooperation in carrying out the said unlawful combination, the said defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and

the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful combination; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, are now here in this count charged to be acts by the said corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy to commit an offense against the said United States: Against
52 the peace and dignity of the said United States; Against the peace and dignity of the said United States, and contrary to the form of the statute in such case made and provided.

Fourth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own name

and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State, but by way of and partly through another State, and were severally engaged both in local com-
53 merce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the aforesaid business and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section one of the said Act of Congress, approved July 2, 1890, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, The Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company of Delaware, the Federal Chemical

Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count,
54 to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly engage in a conspiracy in restraint of commerce among the several States, to wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, whereby the said commerce was restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise which were maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the period of such unlawful conspiracy, and greatly in excess of those prices which would have otherwise prevailed in the said States during the period of such unlawful conspiracy, and were therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby earnest money was given to secure the maintenance of such prices and compensation was made to those losing volume of business by reason of maintaining such prices, that is to say:

There was from time to time allotted to each of said corporation defendants and firms an amount of tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms paid into a common fund the sum

of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sums becoming due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which faithfully maintained such uniform and non-competitive prices and failed to make sales
55 and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but sold and delivered through itself and its subsidiary companies a minimum amount thereof required as a guarantee of good faith, received from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid fell short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies made such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, as a penalty upon such excess sales, paid into such common fund like amounts per ton on the said respective kinds of fertilizers, divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means whereby said unlawful conspiracy was effected, a corporation of Ontario, Canada, whose stock was apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was the common fund aforesaid into which was paid the earnest money and penalties on excess sales aforesaid, and from which was paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which the same was operated and directed.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that within the period aforesaid of said unlawful conspiracy in this count of this indictment mentioned, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and did do and perform such acts as acts on their respective parts of engaging in the said unlawful conspiracy in this count of this indictment mentioned, and that each of such defendants at the time and place when and where such defendants did and performed the acts hereinafter so set forth in connection with such defendant respectively, then

and there well knew the character of such act and that such
56 act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, and as an act on the part of such defendant in engaging in the same, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year, nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the
57 tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chatta-
58 nooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the

County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit,
59 "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Ten-

nessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec. 6 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abraham C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P.
60 Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said corporation and individual defendants, during the period of time aforesaid, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

Fifth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the

first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and
61 through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the several States of the conspiracy and the said States of Virginia, Illinois and Kentucy, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commence against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, approved July 2, 1890, the said corporation defendants named in the said first count, to wit, the Virginia-Caro-
62 lina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, and engage in a conspiracy among themselves and with such other unknown corporations and persons, in restraint of commerce among the several States, to-wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, by which unlawful conspiracy said commerce was to be restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the

various points of delivery in the said States of the conspiracy,
63 which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy, and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices, that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to make sales and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose
64 treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary and

common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful conspiracy was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that such act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the ewenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

65 In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one

Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said consiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company,
66 on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Ten-

nessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle
67 District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his, the said E. W. Connell's name as such Treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fer-

tilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read,"
after the words "Approved—Nashville, Tenn., Dec. 6 1904"
68 and above the word "Manager" upon the face of a certain
other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he, the said Abram C. Read as Manager thereof offer-d to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee

Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

69 SIXTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were

severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress approved July 2, 1890, and entitled "An Act to protect
70 trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and in the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section 5440 of the Revised Statutes of the United States, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William
71 J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Wil-

liam D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the United States, to wit, to engage in a combination in restraint of commerce among the several States, namely, a combination in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, and did then and there so conspire to commit the aforesaid offense by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy, and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices; that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to
72 make sales and deliveries of such merchandise through itself and its subsidiary — amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment,

as aforesaid; and on the other hand, each of said corporation defendants and firms which, through itself and its subsidiary companies, should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful combination was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid, the corporation defendants and individual defendants, hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that such act was done in pur-
73 suance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and

four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at West
74 Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid,

consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchan-
75 dise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Arndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day

and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D.
76 Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec. 6 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes

and Bro.," at Oxford, Alabama, that certain letter of the date
77 set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley, By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did conspire to commit an offense against the United States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

ABRAM M. TILLMAN,
United States Attorney.

(Endorsed as follows:) No. 963. United States Circuit Court, Middle District of Tennessee. *The United States vs. Virginia-Carolina Chemical Company et als.*

Indictment for violating Act of Congress approved July 2, 1890, and entitled "An Act to Protect Trade and Commerce against unlawful restraints and monopolies," and Section 5440 R. S. U. S.

A True Bill. Robert Q. Stewart, Foreman of the Grand Jury.

Names of Witnesses Sworn and Examined Before the Grand Jury.

J. C. Adams, Henry E. Ahern, Lee Ashcraft, Eugene Atkinson, N. E. Barker, W. F. Barrett, James C. Beck, J. M. Berry, W. W. Bird, L. W. Botts, Clarence Braden, S. D. Bramlitt, A. P. Brantley,
78 B. D. Brantley, Dewitt Brown, H. C. Brown, Arthur Bussey, Hezekiah Bussey, E. J. Blume, James A. Boyd, William F. Burns, Oscar Bright, J. W. Carter, B. G. Clark, C. W. Comes, E. W. Connell, Charles Earle Currie, R. L. Davis, Joseph Denee, W. P. Diehl, A. M. Dobbs, John V. Dobson, C. H. Drayton, W. L. Dumas, J. B. Duncan, S. Eastland, T. B. Edwards, Culpepper Exum, H. C. Fischer, J. B. Fiser, Albert French, C. A. Gambrill, A. H. George, John E. Gibbs, William Gilchrist, James M. Goldsmith, A. A. Green, E. P. Grice, W. A. Hansel, G. A. Harrington, H. J. Harby, Allen Hardison, L. C. Hayne, J. L. Haynes, D. P. Haynes, R. W. Henderson, P. W. Hendricks, E. R. Hodgson, junior, E. R. Hodgson, senior, J. L. Horn, W. E. Hudson, T. J. Hunt, R. H. John-

ston, T. V. Kessler, E. M. Kirk, Henry Kirn, H. L. Law, Alexander Leslie, J. A. Lindsey, W. Hampton Logan, Harry Luck, John A. Lewis, W. F. McKenzie, Robert F. Maddox, H. W. Malloy, E. R. Manning, H. L. Milligan, J. Allen Moore, M. B. Neece, W. J. Oliver, E. Thomas Orgain, D. B. Osborne, Every M. Paget, W. W. Perkins, Dr. J. D. Plunkett, F. B. Pope, William Price, Charles Rainey, Frederick Rayfield, Isaac W. Read, W. A. Reynolds, I. T. Rhea, W. E. Richards, H. A. Rogers, V. N. Roadstrum, W. G. Sadler, G. W. Sanders, E. M. Sentelle, W. McR. Smith, R. G. Sparrow, J. F. Stackley, C. A. Steifelmeyer, S. E. Stewart, W. B. Stratford, John Sutterer, E. R. Taber, Frank E. Taylor, W. B. Taylor, W. D. Tharin, J. R. Timmerman, J. W. Todd, S. W. Travers, George H. Tucker, E. Van Winkle, J. T. Welch, O. C. Wiley, C. H. Willcox, T. B. Williams, Benjamin L. Willingham, W. S. Wight, E. G. Woodling.

Filed 11:30 A. M., May 25, 1906. H. M. Doak, Clerk, by E. L. Doak, Deputy Clerk. Abram M. Tillman, U. S. Atty.

I, H. M. Doak, Clerk of the Circuit Court of the United States in and for the Middle District of Tennessee, hereby certify that the foregoing is a true, perfect, and complete copy of an indictment filed as thereupon endorsed, etc. In witness whereof I have hereunto signed my name and affixed the seal of said court, at my office, this the 26th day of May, 1906.

[SEAL OF COURT.] H. M. DOAK, *Clerk.*

79 *Order Awarding Writs of Habeas Corpus and Certiorari.*

Filed July 14th, 1906.

In the Matter of the Petition of FORTESQUE WHITTLE for Writs of *Habeas Corpus* and Certiorari.

FORTESQUE WHITTLE, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

Let the writ of *habeas corpus*, in due form of law, as prayed for in the within petition be issued directed to Morgan Treat, United States Marshal for the Eastern District of Virginia, commanding him forthwith to make return of said writ and to produce the body of said petitioner, Fortesque Whittle, before this Court, to be dealt with according to law; and that the writ of certiorari as prayed for in said petition be issued and made returnable forthwith.

Richmond, Va., July 14th, 1906.

NATHAN GOFF,
Presiding Circuit Judge, April Term, 1906.

Writ of Habeas Corpus.

80 UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

To Morgan Treat, United States Marshal for the Eastern District of Virginia, or any of his deputies:

We command you that the body of Fortesque Whittle in your custody detained, as it is said, together with the day and cause of his caption and detention, you safely have before our Circuit Court of the United States, within and for the District aforesaid, forthwith, to do and receive all and singular those things which the said Circuit Court of the United States, within and for the District aforesaid, shall then and there consider of him in this behalf; and have you then and there this writ.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond, this 14th day of July, in the year of our Lord one thousand nine hundred and six, and of our Independence the 131st year.

[Seal United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Cerk of the Circuit Court of the United States for the Eastern District of Virginia.

Marshal's Return.

To the Circuit Court of the United States for the Eastern District of Virginia:

Morgan Treat, United States Marshal for the said Eastern District of Virginia, to whom the annexed writ is directed, has now before the court the body of Fortesque Whittle therein named, as thereby commanded. And I certify that the cause of the detention of the said Fortesque Whittle is a warrant directed to me and issued by the Honorable Edmund Waddill, Jr., Judge, of the said Eastern
81 District of Virginia, on July 14, 1906, under the provisions of section 1014 of the Revised Statutes of the United States, commanding the imprisonment and removal of the said Fortesque Whittle to the Middle District of Tennessee for trial in the Circuit Court of the United States for said last mentioned district upon a certain indictment found in said last mentioned court against him, the said Fortesque Whittle and others, a copy of which warrant of removal is set out in the petition of the said Fortesque Whittle herein; and that a full, true and correct statement of all the proceedings before the said Judge upon the application for the arrest and commitment of the said Fortesque Whittle and his removal to said Middle District of Tennessee for trial is contained and set forth in the statement or order of said Judge, a copy of which is set forth in section 7 of the said Fortesque Whittle'- petition and in the documents made a part thereof and therein referred to.

MORGAN TREAT,
U. S. Marshal for the Eastern District of Virginia.

Dated this 14th day of July, A. D. 1906.

Writ of Certiorari.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

The President of the United States of America to the Judge of the District Court of the United States for the Eastern District of Virginia:

82 We being informed that there is now pending before you a suit in which the United States of America is plaintiff and Fortesque Whittle is defendant; and we being willing, for certain reasons, that the said case and the record and proceedings therein should be certified by the Judge of the District Court of the United States for the Eastern District of Virginia and removed into the Circuit Court of the United States for the Eastern District of Virginia, sitting at Richmond, Virginia;

We do hereby command you forthwith that you send forthwith to the said Circuit Court of the United States for the Eastern District of Virginia, as aforesaid, the record and proceedings in said case, so that the said Circuit Court of the United States for the Eastern District of Virginia may act thereon as of right and according to law ought to be done.

Witness, The Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond, this 14th day of July, in the year of our Lord one thousand nine hundred and six, and of our Independence the 131st year.

[Seal United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Return of United States District Judge.

The Clerk of the United States District Court is hereby directed to deliver to the Judges of the United States Circuit Court within and for the Eastern District of Virginia the record and proceedings mentioned in the within writ.

Richmond, Va., July 14", 1906.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

83 *Transcript of Proceedings Before Honorable Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia.*

The following proceedings were had before Honorable Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia, at Richmond, Virginia, on the 14th day of July, 1906.

THE UNITED STATES
versus
FORTESQUE WHITTLE.

Writ of Certiorari.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

The President of the United States of America to the Judge of the District Court of the United States for the Eastern District of Virginia:

We being informed that there is now pending before you a suit in which the United States of America is plaintiff and Fortesque Whittle is defendant; and we being willing, for certain rea-
84 sons, that the said case and the record and proceedings therein should be certified by the Judge of the District Court of the United States for the Eastern District of Virginia and removed into the Circuit Court of the United States for the Eastern District of Virginia, sitting at Richmond, Virginia.

We do hereby command you forthwith that you send forthwith to the said Circuit Court of the United States for the Eastern District of Virginia, as aforesaid, the record and proceedings in said case, so that the said Circuit Court of the United States for the Eastern District of Virginia may act thereon as of right and according to law ought to be done.

Witness, The Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond, this 14th day of July, in the year of our Lord one thousand nine hundred and six, and of our Independence the 131st year.

[Seal of United States Circuit Court.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Return of United States District Judge.

The Clerk of the United States District Court is hereby directed to deliver to the Judges of the United States Circuit Court within and for the Eastern District of Virginia the record and proceedings mentioned in the within writ.

Richmond, Va., July 14", 1906.

EDMUND WADDILL, JR.,
U. S. District Judge.

85 *Complaint.*

Filed July 14th, 1906.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

On this 14th day of July, A. D. 1906, at the City of Richmond, in the said District, before the Hon. Edmund Waddill, Jr., Judge of the District Court of the United States of America for the said

District, comes Morgan Treat, United States Marshal in and for the said District, and upon his oath complains and says: that he has good cause to believe and does firmly believe that Fortesque Whittle, of Petersburg, Virginia, stands indicted by the Grand Jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said Fortesque Whittle on the eighth day of July in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, being during said period Vice-President of the Virginia-Carolina Chemical Company a corporation existing under and by the laws of the State of New Jersey, did in the said Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said Fortesque Whittle did unlawfully conspire with divers other persons and
86 corporations to commit an offense against the United States, to-wit, the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States, all as more fully set out in an indictment filed in the said Circuit Court of the United States in and for the Middle District of Tennessee on May 25, 1906, in cause No. 963, entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," a certified copy of which indictment is hereto attached and made a part of this complaint; and complainant therefore charges that the said Fortesque Whittle did commit the said offense against the United States in manner and form as set forth in said indictment.

Complainant furthermore avers upon information and belief that in pursuance of an order of said Circuit Court of the United States for the Middle District of Tennessee a bench warrant has been issued from said Court for the arrest of said Fortesque Whittle and delivered to the Marshal of said Court, who after due search has returned said warrant "not found" in said Middle District of Tennessee; and that said Fortesque Whittle in now believed to be within the Eastern District of Virginia, of which District he is a resident.

Wherefore this complainant prays that the said Fortesque Whittle may be arrested and imprisoned and removed or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee, and further dealt with according to law.

MORGAN TREAT, *Marshal.*

Subscribed and sworn to before me by the above named Morgan Treat the day and year first above written.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

87 *Certified Copy of Indictment.*

In the Circuit Court of the United States of America for the Middle District of Tennessee, of the April Term, in the Year of Our Lord Nineteen Hundred and Six.

MIDDLE DISTRICT OF TENNESSEE, *sct:*

The grand jurors for the United States of America, inquiring for the Middle District of Tennessee, upon their oath present, that before and on the eighth day of July, in the year of our Lord nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year of our Lord nineteen hundred and five, the following named corporations, respectively organized and existing under and authorized by the laws of the several States and of the foreign country here named in connection with them, and hereafter in this indictment called corporation defendants, to wit, the Virginia-Carolina Chemical Company, of New Jersey, Armour and Company, of Illinois, the Acme Manufacturing Company, of North Carolina, the Alabama Chemical Company, of New Jersey, the Anderson Phosphate & Oil Company, of South Carolina, the Ashepoo Fertilizer Company, of South Carolina, the Blackshear Manufacturing Company, of Georgia, the Etiwan Fertilizer Company, of South Carolina, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, The Furman Farm Improvement Company, of Georgia, the Goulding Fertilizer Company, Limited, of Great Britain and Ireland, The Goulding Fertilizer Company, of Florida, the Gulfport Cotton Oil, Fertilizer & Manufacturing Company, of Georgia, the Home Mixture Guano Company, of Georgia, the Jackson Fertilizer Company, of Mississippi, the Marietta Fertilizer Company, of Georgia, the Meridian Fertilizer Factory, of Mississippi, the National Fertilizer Company, of Tennessee, the New Orleans Acid and Fertilizer Company, of New Jersey, the Old Dominion Guano Company, of Georgia, the Planters Chemical Company, of Alabama, the Read Phosphate Com-
88 pany, of West Virginia, the F. S. Royster Guano Company, of Virginia, the Savannah Guano Company, of Georgia, the Southern States Phosphate and Fertilizer Company, of Georgia, the Standard Chemical & Oil Company, of Alabama, the Standard Guano and Chemical Manufacturing Company, of Louisiana, Swift & Company, of Illinois, the Tennessee Chemical Company, of Tennessee, and the Tennessee Valley Fertilizer Company, of Alabama, and certain firms, to wit, the firm of A. D. Adair and McCarty Brothers and the firm of Wilcox, Ives & Company, did carry on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereafter in this indictment called the States of the conspiracy, as wholesale dealers in complete and alkaline fertilizers and in acid phosphates, nitrates, and potash salts suitable for fertilizers, which then were useful and valuable articles of merchandise, indispensable for use on the soil of the said States of the conspiracy in order that the staple

crops of those States might be raised therefrom; that the following named persons, hereafter in this indictment called individual defendants, to wit, Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, of the said Virginia-Carolina Chemical Company, and J. Rice Smith, agent and manager of the said Virginia-Carolina Chemical Company, and president of the Georgia Chemical Works hereinafter mentioned, Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, Fred G. Brown, president and treasurer of the said Anderson Phosphate & Oil Company, Frank Burbidge, president, and William J. McCormack, treasurer of the said Etiwan Fertilizer Company, George Braden, president of the said Federal Chemical Company, of Delaware, and also of the said Federal Chemical Company, of Kentucky, Augustus D. Adair and James D. McCarty, officers and agents of the said Furman Farm Improvement Company and members of the said firm of A. D. Adair and McCarty Brothers, William DeC. Kessler, secretary and treasurer of the said Goulding Fertilizer Company, Limited, James G. Tinsley, president of the said Marietta Fertilizer Company and vice-president of the said Tennessee Chemical Company, William D. Rhea, general manager of the said National Fertilizer Company, William L. Peel, president of the said Old Dominion Guano Company, Abram C. Read, vice-president and general manager, and Isaac Mayo Read, agent, of the said Read Phosphate Company, Frank S. Royster, president, and Charles F. Burroughs, vice-
89 president, of the said F. S. Royster Guano Company, A. J. Ives, whose Christian name is to the said grand jurors unknown, secretary and treasurer of the said Savannah Guano Company and a member of the said firm of Wilcox, Ives & Company, T. Porter Fleming, vice-president of the said Southern States Phosphate and Fertilizer Company, and T. Garland Tinsley, president and treasurer of the said Tennessee Chemical Company, in their said several capacities as officers, managers, agents, and attorneys of the said corporation defendants and members of the said firms, and on behalf of those corporations and firms, during the period of time in this indictment first aforesaid, did carry on the business aforesaid; that in so carrying on the said business the said defendants, that is to say, the said corporation and individual defendants, did sell and deliver large quantities of the said merchandise within the limits of the said States of the conspiracy from the respective places of business of the said corporation defendants and the said firms, located at different points within those States, to retail dealers in and consumers of such merchandise, in such States respectively, and did also ship large quan-tities of the same from their respective places of business, located in the said States of the conspiracy and also in the States of Virginia, Illinois, and Kentucky, into and through other of the said States than those in which their said places of business were located; that in so carrying on the said business and shipping the said merchandise from one of the said States into and through another or others thereof, the said defendants, during the period

aforesaid, were engaged in trade and commerce among the States of this Union within the meaning of the Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in so carrying on the said business, trade and commerce, the said Virginia-Carolina Chemical Company and the said Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, and J. Rice Smith, agent and manager, of the said Virginia-Carolina Chemical Company, did make use of and operate a portion of their said business, trade and commerce through each of certain other corporations, to wit, the American Fertilizing Company, of Virginia, the Birmingham Fertilizer Company, of Alabama, the Coweta Fertilizer Company of Georgia, the Georgia Chemical Works, of Georgia, the Navassa Guano Company, of North Carolina, of either the whole or a majority of the capital stock of which said corporations respect-
90 ively the said Virginia-Carolina Chemical Company was the owner; that in so carrying on the said business, trade and commerce, the said Armour and Company and the said Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, did make use of and operate all of their said business, trade and commerce through a certain other corporation called the Tuscarora Fertilizer Company, of New Jersey, and a certain trade name, to wit, the trade name of Armour Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Furman Farm Improvement Company and the said firm of A. D. Adair and McCarty Brothers did make use of and operate a portion of their said business trade, and commerce under the trade name of Chickamauga Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Federal Chemical Company, of Delaware, and the said Federal Chemical Company of Kentucky, did make use of, and operate a portion of their said business, trade and commerce through, the names of Century Phosphate Company, Fox Chemical Company, Branch, Globe Fertilizer Company, Branch, and Tennessee Phosphate Company; that in so carrying on the said business, trade and commerce, the said National Fertilizer Company did make use of, and operate a portion of its said business, trade and commerce through, the corporate name of American Guano Company and the trade name of Nashville Guano Company; that in so carrying on the said business, trade and commerce, the said Read Phosphate Company did make use of, and operate a portion of its said business, trade and commerce through the corporate name of Empire Guano Company; that in so carrying on the said business, trade and commerce, the said F. S. Royster Guano Company did make use of, and operate a portion of its said business, trade and commerce through the trade name of Atlantic Chemical Company and the corporate name of Columbia Guano Company; that in so carrying on the said business, trade and commerce, the said Swift and Company did make

use of, and operate the whole of its said business, trade and commerce through, the trade name of Swift Fertilizer Works; and that in so carrying on the said business, trade and commerce, the said Tennessee Chemical Company did make use of, and operate a portion of its said business, trade and commerce through, the trade name of Continental Fertilizer Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that of the total volume of such business, trade and commerce then so being carried on by the said defendants and their competitors, the said defendants together had and controlled
91 the principal part, that is to say, ninety per centum thereof; and that because the said corporation defendants and the said firms were in fact separate and distinct from each other, they should have conducted their interstate trade and commerce strictly in competition with each other, during the said period, and then would have so conducted the same but for the unlawful conspiracy in restraint of the said business, trade and commerce in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, at and within the said Middle District of Tennessee, in violation of the provisions of said section one of the said Act of Congress, unlawfully did knowingly engage in a conspiracy in restraint of the said business, trade and commerce, so then being carried on by them in the manner aforesaid, whereby the said business, trade and commerce was restrained in the several ways and by the several means now here set forth and described, that is to say:

Competition as to the prices at which the said merchandise was sold and delivered by the said corporation defendants and the said firms in the said States of the conspiracy, which before the period of time in this indictment first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was prevented and destroyed by the said defendant from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them styled "current, reasonable market prices," for the said merchandise so sold and delivered by the said corporation defendants and the said firms in those States, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so fixed and caused to be fixed; which said uniform and non-competitive prices were prices greatly in excess of the prices which but for the said unlawful conspiracy would at such times have prevailed for the said merchandise in the said business, trade and commerce, and were prices therefore unreasonable, and were a tax on the people of the said States of the said conspiracy amounting to a large sum of money, to wit, four million dollars, annually during the continuance of the same.

For and on account of such quantity of the said merchandise as was sold and delivered as aforesaid by any of such corporation de-

fendants or of such firms, in excess of amounts allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and de-
92 livered in excess, was, by the corporation defendants and firms so selling and delivering the same, paid into a common fund, held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, compensated, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as sold and delivered less than the amounts so allotted to them respectively, so it was not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy that each of the said corporation defendants and of the said firms also paid into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be the absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm, in disposing of its said allotment in carrying on the said business, trade and commerce, on its part faithfully should exercise every reasonable effort and due business diligence to maintain the prices so fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its said excess sales, in which case an equal amount was returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also made uniform and non-competitive as between all of the said corporation defendants and the said firms, in the said business, trade and commerce, among the said States of the conspiracy.

As a convenient intermediary and common agent between the said corporation defendants and the said firms, respectively and as a means of securing their co-operation in carrying out the said unlawful conspiracy, the said defendants made use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company, Limited, was also allowed and required to collect, hold, use and distribute the said fund aris-
93 ing from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of September, in the year nineteen hundred and three, during the period of time aforesaid, at and within the City of New York, in the State of New York, unlawfully did knowingly, deposit with the Continental Trust Company, of the said City of New York, the sum of twenty-six thousand dollars, in connection with the purchase of by the said trust company on behalf of the said Virginia-Carolina Chemical Company, and in the name of one Montrose Stuart, a clerk in the office of the said trust company, of twenty-six hundred shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Samuel T. Morgan, on the seventh day of October, in the same year nineteen hundred and three, and during the period of time aforesaid, at and within the said city of New York, in the State of New York, unlawfully did deliver to the said William DeC. Kessler, Vice-President of the said Colonial Development Company, Limited, three checks drawn by the said Virginia-Carolina Chemical Company, one upon the National City Bank, of New York City aforesaid, for eighty thousand dollars, another on the Bank of America, of New York City aforesaid, for fifty thousand dollars, and the other on the National Park Bank, of New York City aforesaid, for thirty-five thousand and four hundred and sixty-eight dollars, aggregating one hundred and sixty-five thousand and four hundred and sixty-eight dollars, as and for a payment, by the said Virginia-Carolina Chemical Company, to the said Colonial Development Company, Limited, of twenty cents a ton on its allotment under the said unlawful conspiracy; he the said Samuel T. Morgan, when and where he so as aforesaid delivered the said checks to the said William DeC. Kessler, well knowing the character and purpose of the same, and well knowing that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as acts on their parts respectively of engaging in the same, the said Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox,
94 J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, on the seventeenth day of September, in the year nineteen hundred and three, and during the period aforesaid, at the said City of New York, in the said State of New York, unlawfully did meet together to discuss and further the object of the said unlawful conspiracy; they the said Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy,

Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, when and where they so as aforesaid met together, each well knowing the character and purpose of the said meeting, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank E. Wilcox, on the first day of November, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did deliver to one W. W. Perkins, Secretary of the said American Fertilizing Company, a certain document, too voluminous to be here set forth, stating certain prices and terms of sale, fixed in pursuance of the said unlawful conspiracy, for the said fertilizer merchandise, in the States of North Carolina, South Carolina, Georgia, Florida, Alabama and Tennessee, for the spring season of the year nineteen hundred and four; he the said Frank E. Wilcox at the time and place when and where he so as aforesaid delivered the said document to the said W. W. Perkins, well knowing the character of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, and during the period of time aforesaid, at the town of Decherd, in the said Middle District of Tennessee, by and through one
95 F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, and during the period aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to

furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, and during the period of time aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at the City of Nashville, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, a certain notice of shipment, partly written and partly printed, in the words and figures following, that is to say:

"The Armour Fertilizer Works
Owned and operated by
Armour & Company.

Duplicate.
To be Mailed with Bill of
Lading to Customer.

Prudential Building,
Atlanta, Ga.

No. 612
March 10", 1905.

96 We have this day shipped from Nashville, Tenn. storage
To Bramlitt Hdw Co.
Corinth, Miss.
Charge to S. D. Bramlitt. Address same.

No. Bags.	Weight of bags.	Brand	Tons
400	100	King Cotton 8.2.2	20

Order No. 4613.
Bill of lading herewith. Invoice will be mailed from Chicago.
Above quantities shipped 3 10 1905. Freight Terms.....
Car No. 13619. Via L. & N.
Charges prepaid $18.00.

THE ARMOUR FERTILIZER WORKS,
Per ALEX. LESLIE."

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the

said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Austin B. Carpenter, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Assistant Secretary of the said Colonial Development Company, unlawfully did sign his name, to wit, "A. B. Carpenter, Ass't Sec'y" on the face of a certain stock certificate, to wit, certificate No. 28, showing the ownership by one Thomas M. Green of fifty-one shares of the capital stock of the said Colonial Development Company; he the said Austin B. Carpenter, at the time and
97 place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his said act to be done in pursuance and to effect the object of the said conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles H. MacDowell, on the twelfth day of January, in the year nineteen hundred and five, and during the period of time aforesaid, at and within the city of Chicago, in the State of Illinois, unlawfully did sign his name, to-wit, "C. H. MacDowell," under the name of the Armour Fertilizer Works, and after the word "by" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Armour and Company, under the trade name of "Armour Fertilizer Works," offered to furnish and deliver at Corinth, in the State of Mississippi to one S. D. Bramlitt, twenty tons of the fertilizer merchandise aforesaid; he the said Charles H. MacDowell, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Acme Manufacturing Company, on the first day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the city of Wil-

mington, in the State of North Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of six hundred and twenty dollars for sixty-two shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Alabama Chemical Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Montgomery, in the State of Alabama, unlawfully did knowingly deliver its certain check drawn upon the Merchants and Planters-Farley National Bank, Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of William DeC. Kessler, as payment for forty-two shares of the capital stock of the said Colonial Development Company, Limited;

98 And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Anderson Phosphate and Oil Company, on the twenty-ninth day of August, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Anderson, in the State of South Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of five hundred and eighty dollars for fifty-eight shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly buy from the Carolina Savings Bank, Charleston, South Carolina, a draft upon the Citizens National Bank, of New York City, for the payment of the sum of seven thousand nine hundred and forty-nine dollars and forty-three cents to the order of one Frank E. Taylor, Vice-President and General Manager of the said Ashepoo Fertilizer Company;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and *and* during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly cause the said Frank E. Taylor to endorse the check last above mentioned payable to the order of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Blackshear Manufacturing Company, on the seventeenth day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Blackshear, in the State of Georgia, unlawfully did know-

ingly deliver to the Atlantic Coast Line Railroad Company six tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of E. J. Blume & Company, at Live Oak, in the State of Florida;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Etiwan Fertilizer Company, on the fourteenth day of December, in the year nineteen hundred
99 and three, and during the period of time aforesaid, at and within the town of Cairo, in the State of Georgia, by and through one P. H. Seabrook, its agent, unlawfully did knowingly offer and agree to furnish and deliver to the firm of Wight Brothers, of Cairo aforesaid, thirty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank Burbidge, on the first day of July, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Charleston, in the State of South Carolina, having then and there in his hands a certain check, dated the thirtieth day of June, in the same year nineteen hundred and four, drawn by the said Alabama Chemical Company upon the Continental National Bank of Chicago, for the payment of eleven hundred and forty-two dollars and ninety-seven cents to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Pay to order of People's National Bank, Colonial Development Co., Ltd., F. Burbidge, Pres."; he the said Frank Burbidge then and there, to wit, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William J. McCormack, on the ninth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, having then and there in his hands a certain check dated the fifth day of September, in the same year, drawn by the said New Orleans Acid & Fertilizer Company, upon the Louisiana National Bank of New Orleans, for the payment of seven hundred and fifty dollars to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Colonial Developm't Co., Frank Burbidge, Sec. & Treas., per Wm. J. McCormack"; he the said William J. McCormack, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy,

and to effect the object of the same, and as an act on its part of engaging in the same, the said Federal Chemical Company, of
100 Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the said State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, and during the period of time aforesaid, at Springfield afore-
101 said, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff & Williams, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Goulding Fertilizer Company, Limited, on the twenty-fifth day of November, in the year nineteen

hundred and three, and during the period of time aforesaid, at and within the town of Cullman, in the State of Alabama, by and through one W. E. Craig, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one John Sutterer, at Cullman aforesaid, three hundred and seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the sixth day of September, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Pensacola, in the State of Florida, having then and there in his hands a certain check, dated the fifth day of September, in the same year nineteen hundred and three, drawn by the said Alabama Chemical Company upon Merchandise Merchants and Planters-Farley National Bank of Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of W. DeC. Kessler, unlawfully did sign his name, to wit, "W. DeC. Kessler," upon the back of the said check next below the written words "Pay to the order of Colonial Development Co."; he the said William DeC. Kessler then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the back of the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the said fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Vice-President of the said Colonial Development Company, unlawfully did sign his name, to wit, "W. DeC. Kessler, V. P." on the face of the said stock certificate in the name of Thomas M. Green; he the said William DeC. Kessler, at the time and place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his act to be done in pursuance and to effect the object
102 of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Gulfport Cotton Oil Fertilizer and Manufacturing Company, on the twenty-seventh day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-four hundred dollars for and in respect of twelve thousand tons of the fertilizer merchandise aforesaid, allotted to the said Gulfport Cotton Oil, Fertilizer and Manufacturing Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy,

and to effect the object of the same, and as an act on its part of engaging in the same, the said Home Mixture Guano Company, on a day in the year nineteen hundred and three to the said grand jurors unknown, and during the period of time aforesaid, at and within the City of Columbus, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Jackson Fertilizer Company, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Jackson, in the State of Mississippi, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Marietta Fertilizer Company, on the twenty-first day of July, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by and through one L. W. Reeves, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one James A. Boyd, at Jonesboro aforesaid, seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said James G. Tinsley, on the third
103 day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Nashville, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley; he the said James G. Tinsley, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Meridian Fertilizer Factory, on the seventh day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Cullman, in the State of Alabama, by its agent E. L. Robbins, un-

lawfully did knowingly offer to furnish to C. A. Steifelmeyer one hundred and fifty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge; he the said
104 William D. Rhea, then and there, to wit, at the time and place when and where he so directed and required the said E. W. Connell to sign his name as aforesaid to the said check, well knowing the nature and contents of the said check, and that his said direction and requirement were in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid; he the said William D. Rhea then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the said document, well knowing the character of the same, and well knowing his said act to be one done in pursuance of and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said New Orleans Acid & Fertilizer Company, on

the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars for seventy-five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Old Dominion Guano Company, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-six hundred and twenty dollars, for and in respect of
105 thirteen thousand one hundred tons of the fertilizer merchandise aforesaid, allotted to the said Old Dominion Guano Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William L. Peel, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did sign his name, to wit, "W. L. Peel, Prest.," to a certain check, to wit, a check drawn by the Maddox-Rucker Banking Company upon the National Park Bank, New York, for the payment of twenty-six hundred and twenty dollars to the order of the said Colonial Development Company, Limited; he the said William L. Peel, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Planters Chemical Company, on the thirtieth day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Talladega, in the State of Alabama, unlawfully did knowingly pay the said Colonial Development Company, Limited, the sum of fifty dollars for five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Read Phosphate Company, on the fifth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Hartselle, in the State of Alabama, unlawfully did knowingly offer to sell and deliver to one S. E. Stewart, at that place, forty to fifty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of en-

gaging in the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here
106 set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid; he the said Abram C. Read, then and there, to wit, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved, Nashville, Tenn. Dec. 6, 1904," and above the word "Manager," upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof, offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid; he the said Abram C. Read then and there, to wit, at the time and place when and where he so as aforesaid signed his name to the last mentioned document, well knowing the character and contents of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said F. S. Royster Guano Company, on the thirtieth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine thousand three hundred and fourteen dollars and seventy-four cents, on account of such merchandise sold and delivered by the said F. S. Royster Guano Company in excess of its allotment under the aforesaid unlawful conspiracy;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles F. Burroughs, on the
107 twenty-fifth day of March, in the year nineteen hundred and four, and during the period of time aforesaid, at and within

the City of Norfolk, in the State of Virginia, unlawfully did sign his name, to wit, "C. F. Burroughs," under the word "countersigned" and above the words "Vice-President" upon the face of a certain document, partly written and partly printed, too voluminous to be here set forth in full, wherein and whereby the said F. S. Royster Guano Company and he the said Charles F. Burroughs, as Vice-President thereof, offered to sell to one J. W. Carter, and to deliver to him at Maxton, in the State of North Carolina, ten tons of the fertilizer merchandise aforesaid; he the said Charles F. Burroughs, at the time and place when and where he so as aforesaid signed his name to the said document, well knowing the character and contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Savannah Guano Company, on the second day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did knowingly pay to the said Frank Burbidge the sum of nine hundred and forty dollars for ninety-four shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said A. J. Ives, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did sign his name, to wit, "A. J. Ives, Secty. & Treas." to a certain check, to wit, a check drawn by the Savannah Guano Company upon the Merchants National Bank, Savannah, Georgia, for the payment of three thousand one hundred and forty dollars to the order of New York Exchange; he the said A. J. Ives, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further n pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Southern States Phosphate and Fertilizer Company, on the fifth day of September, in the year nineteen
108 hundred and three, and during the period of the time aforesaid, at and within the City of Augusta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine hundred and sixty dollars for ninety-six shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Chemical and Oil Company, on the third day of October, in the year nineteen hundred and three,

and during the period of time aforesaid, at and within the Town of Troy, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand dollars for and in respect of one-half of forty thousand tons of the fertilizer merchandise aforesaid allotted to the said Standard Chemical and Oil Company, as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Guano and Chemical Manufacturing Company, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand seven hundred and seventy-four dollars and seventy-seven cents as a partial payment for and in respect of the fertilizer merchandise aforesaid, allotted to the said Standard Guano and Chemical Manufacturing Company, as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Swift & Company, on the first day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro in the State of Tennessee, by its agent, J. Z. Elliott, unlawfully did knowingly offer to furnish to one W. P. Diehl thirty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

And that, further in pursuance of the said unlawful con-
109 spiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes & Bro., at Oxford, Alabama, a certain letter of the tenor following, to wit:

T. G. Tinsley, Pres't & Treas. Allen Hardison, Sec'y.

Tennessee Chemical Company, Manufacturers and Importers of Ox Fertilizers.

NASHVILLE, TENNESSEE, *May* 17, '05.

Messrs. D. P. Haynes & Bro., Oxford, Ala.

DEAR SIRS:—I am in receipt of your favor of the 16th and beg to state we could not allow any discount further than the 5% for cash settlement. We will be glad to have you settle in cash on this basis if you desire to do so, but are sorry to state we are not in a position to offer you any further discount.

Yours truly, T. G. TINSLEY, *President;*

he the said T. Garland Tinsley then and there, to wit, at the time and place when and where he so as aforesaid caused the said letter to be written and sent as aforesaid, well knowing that the same was so written and sent in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part in engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Company, James G. Tinsley. By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon the Mercantile National Bank, New York, for the payment of
110 sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley; he the said T. Garland Tinsley, at the same time and place when and where he so as aforesaid wrote the said endorsement on the back of the said check, well knowing the contents of the same, and that his said act was done in pursuance of and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Valley Fertilizer Company, on the second day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Florence, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars, as a partial payment for and in respect of fertilizer merchandise aforesaid, allotted to the said Tennessee Valley Fertilizer Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on their parts respectively, of engaging in the same, the said Frank Burbidge,

Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson, during the period of time aforesaid, at the City of New York, in the State of New York, the City of Washington, in the District of Columbia, Old Point Comfort and Hot Springs, in the State of Virginia, St. Augustine, in the State of Florida, and French Lick Springs, in the State of Indiana, unlawfully did as officers, directors and attorney of the said Colonial Development Company, Limited, meet together for the purpose of discussing and attending to the affairs of the said Colonial Development Company, Limited; they the said Frank Burbidge, Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson when and where they so met together aforesaid, well knowing the purpose of such meetings, and well knowing their acts in the premises to be acts in pursuance and to effect the object of the said unlawful conspiracy, and that the same were done as acts on their parts respectively of engaging in the said unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, during the period of time aforesaid, and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form aforesaid, unlawfully did engage in a conspiracy in restraint of trade and commerce among the several States; Against the
111 peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

SECOND COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the first count described, and were so engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord, nineteen hundred and three at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the grand jurors unknown, and engage in a conspidacy, among themselves and with such other

unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid; which said unlawful conspiracy in this count mentioned then and there was a conspiracy for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described; that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing and causing to be fixed, uniform and non-competitive prices, by them to be styled "current, reason-
112 able market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such times prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be the

absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on the said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its excess sales, in which case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of pay-
113 ment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their co-operation in carrying out the said unlawful conspiracy, the said defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, and as being acts on the part of the said corporation and individual defendants respectively of engaging in that conspiracy, are now here in this count charged to be acts by the same corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned, and to have been acts on the part of the said corporation and individual defendants respectively of engaging in the last-named unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the

said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of trade and commerce among the several States;
114 against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

THIRD COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the said first count described, and so were engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the said United States, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the said United States, to wit, the offense of engaging in a combination, among themselves and with such other unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid, which said unlawful conspiracy in this count mentioned then and there was a conspiracy to engage in a combination for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and com-
115 merce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them to be styled "current,

reasonable market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such time prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful combination and ninety per centum thereof during the second year; it being a further element of the said unlawful combination in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be — absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on the said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its excess sales, in which
116 case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their cooperation in carrying out the said unlawful combination, the said

defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful combination; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, are now here in this count charged to be acts by the said corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a con-
117 spiracy to commit an offense against the said United States;
Against the peace and dignity of the said *said* United States; *Against the peace and dignity of the said United States*, and contrary to the form of the statute in such case made and provided.

Fourth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in

connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State, but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchan-
118 dise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the aforesaid business and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section one of the said Act of Congress, approved July 2, 1890, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Ala-

bama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company,
119 and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly engage in a conspiracy in restraint of commerce among the several States, to wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, whereby the said commerce was restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise which were maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the period of such unlawful conspiracy, and greatly in excess of those prices which would have otherwise prevailed in the said States during the period of such unlawful conspiracy, and were therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby earnest money was given to secure the maintenance of such prices and compensation was made to those losing volume of business by reason of maintaining such prices, that is to say:

There was from time to time allotted to each of said corporation

defendants and firms an amount of tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporations defendants and firms paid into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sums becoming due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which faithfully maintained such uniform and non-competitive prices and failed to make sales
120 and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but sold and delivered through itself and its subsidiary companies a minimum amount thereof required as a guarantee of good faith, received from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid fell short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies made such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, as a penalty upon such excess sales, paid into such common fund like amounts per ton on the said respective kinds of fertilizers, divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means whereby said unlawful conspiracy was effected, a corporation of Ontario, Canada, whose stock was apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was the common fund aforesaid into which was paid the earnest money and penalties on excess sales aforesaid, and from which was paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which the same was operated and directed.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that within the period aforesaid of said unlawful conspiracy in this count of this indictment mentioned, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and did do and perform such acts as acts on their respective parts of engaging in the said unlawful conspiracy in this count of this indictment mentioned, and that each of such defendants at the time and place when

and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant- respectively, then and there well knew the character of such act and that such
121 act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, and as an act on the part of such defendant in engaging in the same, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year, nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the
122 tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to

Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chatta-
123 nooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit,
124 "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawul conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec. 6, 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abraham C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P.
125 Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said corporation and individual defendants, during the period of time aforesaid, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

FIFTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen

hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the
126 other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so

carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, approved July 2, 1890, the said corporation de-
127 fendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, and engage in a conspiracy among themselves and with such other unknown corporations and persons, in restraint of commerce among the several States, to-wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid by which unlawful conspiracy said commerce was to be restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the

various points of delivery in the said States of the conspiracy,
128 which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy, and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices, that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to make sales and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales as aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants
and firms and paid for by them at ten dollars a share; whose
129 treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary

and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful conspiracy was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that such act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the ewenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

130 In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Dercherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one

Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesand, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company,
131 on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of

Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District
132 of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his, the said E. W. Connell's name as such Treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fer-

tilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn., Dec. 6 1904" and
133 above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for

the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

134 SIXTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United

States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An
135 Act to protect trade and commerce against unlawful restraints and monopolies"; that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorneys of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and in the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section 5440 of the Revised Statutes of the United States, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack,
136 George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Roys-

ter, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the United States, to wit, to engage in a combination in restraint of commerce among the several States, namely, a combination in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, and did then and there so conspire to commit the aforesaid offense by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy; and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices; that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to
137 make sales and deliveries of such merchandise through itself and its subsidiary — amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation

defendants and firms which, through itself and its subsidiary companies, should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful combination was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that
138 such act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the

object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and

within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchan-
140 dise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Arndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee,

unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Man-
141 ager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec 6 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid. in the said Middle District of Tennessee,

unlawfully did cause to be written and sent by mail to "D. P. Haynes and Bro.," at Oxford, Alabama, that certain letter of the date
142 set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley, By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did conspire to commit an offense against the United States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

ABRAM M. TILLMAN,
United States Attorney.

(Endorsed as follows:) No. 963. United States Circuit Court, Middle District of Tennessee. *The United States vs. Virginia-Carolina Chemical Company et als.*

Indictment for violating Act of Congress approved July 2, 1890, and entitled "An Act to Protect Trade and Commerce against unlawful restraints and monopolies," and Section 5440 R. S. U. S.

A True Bill. Robert Q. Stewart, Foreman of the Grand Jury.

Names of Witnesses Sworn and Examined Before the Grand Jury.

J. C. Adams, Henry E. Ahern, Lee Ashcraft, Eugene Atkinson, N. E. Barker, W. F. Barrett, James C. Beck, J. M. Berry, W. W. Bird, L. W. Botts, Clarence Braden, S. D. Bramlitt, A. P. Brantley,
143 B. D. Brantley, Dewitt Brown, H. C. Brown, Arthur Bussey, Hezekiah Bussey, E. J. Blume, James A. Boyd, William F. Burns, Oscar Bright, J. W. Carter, B. G. Clark, C. W. Comes, E. W. Connell, Charles Earle Currie, R. L. Davis, Joseph Denee, W. P. Diehl, A. M. Dobbs, John V. Dobson, C. H. Drayton, W. L. Dumas, J. B. Duncan, S. Eastland, T. B. Edwards, Culpepper Exum, H. C. Fischer, J. B. Fiser, Albert French, C. A. Gambrill, A. H. George, John E. Gibbs, William Gilchrist, James M. Goldsmith, A. A. Green, E. P. Grice, W. A. Hansell, G. A. Harrington, H. J. Harby, Allen Hardison, L. C. Hayne, J. L. Haynes, D. P. Haynes, R. W. Henderson, P. W. Hendricks, E. R. Hodgson, junior, E. R.

Hodgson, senior, J. L. Horn, W. E. Hudson, T. J. Hunt, R. H. Johnston, T. V. Kessler, E. M. Kirk, Henry Kirn, H. L. Law, Alexander Leslie, J. A. Lindsey, W. Hampton Logan, Harry Luck, John A. Lewis, W. F. McKenzie, Robert F. Maddox, H. W. Malloy, E. R. Manning, H. L. Milligan, J. Allen Moore, M. B. Neece, W. J. Oliver, E. Thomas Orgain, D. B. Osborne, Every M. Paget, W. W. Perkins, Dr. J. D. Plunkett, F. B. Pope, William Price, Charles Rainey, Frederick Rayfield, Isaac W. Read, W. A. Reynolds, I. T. Rhea, W. E. Richards, H. A. Rogers, V. N. Roadstrum, W. G. Sadler, G. W. Sanders, E. M. Sentelle, W. McR. Smith, R. G. Sparrow, J. F. Stackley, C. A. Steifelmeyer, S. E. Stewart, W. B. Stratford, John Sutterer, E. R. Taber, Frank E. Taylor, W. B. Taylor, W. D. Tharin, J. R. Timmerman, J. W. Todd, S. W. Travers, George H. Tucker, E. Van Winkle, J. T. Welch, O. C. Wiley, C. H. Willcox, T. B. Williams, Benjamin L. Willingham, W. S. Wight, E. G. Woodling.

Filed 11:30 A. M., May 25, 1906. H. M. Doak, Clerk, by E. L. Doak, Deputy Clerk. Abram M. Tillman, U. S. Atty.

I, H. M. Doak, Clerk of the Circuit Court of the United States in and for the Middle District of Tennessee, hereby certify that the foregoing is a true, perfect, and complete copy of an indictment filed as thereupon endorsed, etc. In witness whereof I have hereunto signed my name and affixed the seal of said court, at my office, this the 26th day of May, 1906.

[SEAL OF COURT.] H. M. DOAK, *Clerk.*

144 *Warrant.*

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

To the Marshal of the Eastern District of Virginia, Greeting:

Whereas complaint in writing, on oath, has been made to me charging that Fortesque Whittle of Petersburg, Virginia stands indicted by the grand jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said Fortesque Whittle on the eighth day of July, in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, did in the Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said Fortesque Whittle did unlawfully conspire with divers other persons and corporations to com-

mit an offense against the United States, to-wit, the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States; and application has been made to me that the said Fortesque Whittle may be arrested and imprisoned and removed or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee;

Now therefore, you are hereby commanded to arrest the
145 said Fortesque Whittle if he be found within your said District, and bring him forthwith before me at my Chambers in Richmond, in order that he may be dealt with according to law.

Richmond, Va., July 14", 1906.

EDMUND WADDILL, JR.,
U. S. District Judge.

Marshal's Return.

Pursuant to the within writ, I have taken the defendant Fortesque Whittle into custody and now have him before Hon. Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia.

July 14, 1906.

MORGAN TREAT,
United States Marshal.

Conclusions of the Court.

Filed July 14th, 1906.

THE UNITED STATES
vs.
FORTESQUE WHITTLE.

The conclusion reached by the Court is that in a proceeding for the arrest and removal of persons charged with a violation of the laws of the United States pursuant to section 1014 of the Revised Statutes of the United States, before a United States District
146 Judge sitting in the State of Virginia, in which State there no longer exists the right of a preliminary examination upon a criminal charge prior to the trial upon the merits, when such Judge is called upon to act as well in the matter of the apprehension of such persons, as in their removal to the jurisdiction in which they have been indicted, that upon the government's presentation of a sufficient indictment regularly found by a grand jury in a court of the United States, properly charging the commission of an offense within the district in which such indictment is found, coupled with proof of the identity of the person indicted, it is its duty to properly bail such person for appearance before the Court in which he is indicted, or cause him to be removed thereto.

Order Allowing Bail.

Filed July 14th, 1906.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The within named Fortesque Whittle having been brought before me, and identified; and it appearing by a duly authenticated copy of an indictment that he stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al,*" for violation of section one of the act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of Section 5440 of the Revised Statutes of the United States, it is ordered that the said Fortesque Whittle give
147 bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial before said Court under the said indictment, or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee, to be there dealt with according to law.

Richmond, Va., July 14", 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the
Eastern District of Virginia.

Warrant of Imprisonment and Removal.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The President of the United States to the United States Marshal of the Eastern District of Virginia, Greeting:

Whereas it has been made to appear that Fortesque Whittle stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 933 in said Court entitled: "The United States *vs.* Virginia-Carolina Chemical Company *et al,*" for violation of section one of the act of Congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States; and whereas the said Fortesque Whittle having been brought before me, and identified; and a certified copy of said indictment furnishing probable cause to believe him to be guilty as therein charged, and whereas it was thereupon ordered by
148 me that said defendant give bail in the sum of five thousand dollars with one or more sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial under said indictment, or that in de-

fault thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee to be there dealt with according to law; and the said defendant having failed and refused to give bail as required, therefore:

You are hereby commanded in the name and by the authority of the said United States to imprison the said Fortesque Whittle in accordance with law, and that with all convenient speed you remove him hence to the said Middle District of Tennessee and there surrender him to the Marshal of that District, there to be dealt with according to law.

Richmond, Va., July 14, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the
Eastern District of Virginia.

Marshal's Return on Foregoing Warrant.

Executed July 14, 1906 by taking the within named defendant Fortesque Whittle into custody, but before the order of removal was executed, a writ of *Habeas Corpus* was issued by order of the Circuit Court of the United States for the Eastern District of Virginia, sitting at Richmond, Virginia, commanding me to produce the body of the said Fortesque Whittle before the said United States Circuit Court in the City of Richmond, Virginia, forthwith, and in pursuance of said writ of *Habeas Corpus,* I took the said Fortesque Whittle before the United States Circuit Court at aforesaid,
149 by which court said writ of *Habeas Corpus* was discharged and an appeal allowed to the said Fortesque Whittle to the Supreme Court of the United States, pending which appeal the said Fortesque Whittle was by order of said Circuit Court discharged from custody on bond conditioned for his appearance before said Circuit Court to abide such order as should be made by said Circuit Court upon return of the mandate of said Supreme Court of the United States upon determination of said appeal.

Richmond, Virginia, July 14, 1906.

MORGAN TREAT,
United States Marshal.

Statement of Proceedings and Order.

Filed July 14, 1906.

THE UNITED STATES OF AMERICA, *Eastern District of Virginia:*

THE UNITED STATES
vs.
FORTESQUE WHITTLE.

This is an application under the provisions of Section 1014 of the United States Revised Statutes for a warrant for the removal of

Fortesque Whittle to the Middle District of Tennessee and comes before me as follows:—

The District Attorney for this District, together with Mr. E. T. Sanford, Counsel for the United States, presented to me a verified complaint of Morgain Treat, United States Marshal for this District, with the certified copy of an Indictment filed on May 25th, 1906, in the Circuit Court of the United States for the Middle District of Tennessee in the case of the United States
150 *vs.* Virginia-Carolina Chemical Company and other defendants, including among such defendants the said——

Said complaint and copy of said indictment are made parts of this order. Upon the exhibition of this Indictment and affidavit and the *ex parte* motion of the counsel for the United States I made an order for the arrest of said Fortesque Whittle and his production before me.

This order was duly executed by the said Marshal, who arrested the said Fortesque Whittle and brought him before me in Richmond on this 14th day of July, 1906, as shown by his return. When the accused was so brought before me it was moved by the counsel for the United States that inasmuch as the indictment charged offenses against the United States triable in the Circuit Court of said United States for the Middle District of Tennessee, and the identity of the defendant was admitted, that an order be forthwith made for the commitment of said Fortesque Whittle for trial before said Circuit Court.

This motion was made upon the certified copy of the indictment without any further testimony, the identity of the party arrested and brought before me as the Fortesque Whittle mentioned in the Indictment being admitted.

And thereupon the defendant Fortesque Whittle offered himself as witness in his own behalf, and being about to be sworn, the United States, by its counsel, thereupon objected to the witness being sworn or to any testimony being given in rebuttal of the Indictment in these proceedings, on the ground that the identity of the defendant being admitted, inasmuch as the Indictment on its face charges offenses against the United States committed and triable in the jurisdiction in which the defendant stands indicted, no evidence is admissible here to impeach the indictment, and the order of commitment should be made without other proof.

The Defendant's counsel thereupon offered to prove by the defendant and other witnesses then and there present, that the Circuit Court for the Middle District of Tennessee had no jurisdic-
151 tion over the person of said defendant touching the offense charged in said indictment, in that defendant and said other witnesses would, if permitted, testify.

That he was not on the 8th day of July, 1903, or during the period of time between the eighth day of July, 1903, and the 1st day of September, 1905, in the State of Tennessee, or the Middle District of Tennessee and that he has not been in the Middle District of Tennessee or the State of Tennessee since June 1900; that he did not enter, assent to, join or engage in the conspiracies in the indict-

ment mentioned, or any of them within the Middle District of Tennessee at the time mentioned therein, or at any other time; that he did not within the period mentioned, or at any other time within the Middle District of Tennessee do any act or thing to promote or further the said conspiracies in the indictment mentioned or any of them, or to effect the object or purposes thereof; that he did not at any time or any place join, assent to, enter or engage in the conspiracies, or any of them, engaged in the Middle District of Tennessee, alleged or aver-ed in the said indictment.

Thereupon counsel for the Government renewed its objections as aforesaid. After hearing counsel on both sides, the Court announced its conclusions as follows:—

"The conclusion reached by the Court is that in a proceeding for the arrest and removal of persons charged with a violation
152 of a law of the United States pursuant to section 1014 of the Revised Statutes of the United States, before a United States District Judge, sitting in the State of Virginia, in which State there no longer exists the right of a preliminary examination upon a crime charged prior to the trial upon the merits, when said Judge is called upon to act as well in the matter of the apprehension of such persons, as in their removal to the jurisdiction in which they have been indicted, that upon the Government's presentation of a sufficient indictment, regularly found by a grand jury in a Court of the United States, properly charging the commission of an offense within the district in which such indictment is found, coupled with proof of the identity of the person indicted, it is its duty to properly bail such person for appearance before the Court in which he is indicted, or cause him to be removed thereto."

Therefore it was ordered that the testimony offered is inadmissible, and will not be received, and I therefore made the following order:

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The within named Fortesque Whittle having been brought before me, and identified; and it appearing by a duly authenticated copy of an indictment that he stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al.,*" for violation of section one of the act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the
153 United States, it is ordered that the said Fortesque Whittle give bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial before said court under the said indictment; or that in default

thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee, to be there dealt with according to law.

Richmond, Va., July 14th, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

And after said order had been made and the defendant declined to give bond, the counsel for the United States moved that the warrant do issue directed to the Marshal of this District for the imprisonment and removal of the said Fortesque Whittle to the Middle District of Tennessee and his delivery to the custody of the United States Marshal of that district.

On such motion counsel for the said Fortesque Whittle objected and again offered the said Fortesque Whittle as witness, together with the other witnesses here-before referred to, to establish the same matters and facts as hereinbefore stated with regard to the objection to the order for the commitment of the said Fortesque Whittle which testimony was again offered and was again objected to by the counsel for the United States on the same grounds as above set forth, and on the further ground that these matters could not now be inquired of in this stage of the proceedings, and was again excluded by the Court, to all of which counsel for the said Fortesque Whittle duly excepted and had the exceptions noted and entered.

I therefore issued a warrant directed to the Marshal as follows:

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

Richmond, Va., July 14, 1906.

154 *Warrant of Imprisonment and Removal.*

UNITED STATES OF AMERICA, *Eastern District of Virginia, act:*

The President of the United States to the United States Marshal of the Eastern District of Virginia, Greeting:

Whereas it has been made to appear that Fortesque Whittle stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said court entitled: "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," for violation of section one of the act of Congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States; and whereas the said Fortesque Whittle having been brought before me, and identified; and a certified copy of said indictment furnishing probable cause to believe him to be guilty as therein charged, and whereas it was thereupon ordered by me that said defendant give bail in the sum of five thousand dollars with one or more sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial under said indictment, or that in default thereof he be imprisoned for seasonable removal to the said Middle District of

Tennessee to be there dealt with according to law; and the said defendant having failed and refused to give bail as required, therefore:

You are hereby commanded in the name and by the authority of the said United States to imprison the said Fortesque Whittle
155 in accordance with law, and that with all convenient speed you remove him hence to the said Middle District of Tennessee and there surrender him to the Marshal of that District, there to be dealt with according to law.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

Richmond, Va., July 14, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

Richmond, Va., July 14, 1906.

Certificate of Clerk.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

I, G. E. Bowden, Clerk of the District Court of the United States for the Eastern District of Virginia, do hereby certify that the foregoing is a full and true transcript of the record and proceedings in the therein entitled cause made in obedience to the direction in the return of the Honorable Edmund Waddill, Jr., Judge of said
156 Court to the writ of certiorari, attached to and made a part of said record.

In witness whereof, I have hereunto set my hand and affixed the seal of the said District Court, at the City of Richmond, this 14th day of July, A. D. 1906.

[Seal United States District Court.]

G. E. BOWDEN,
Clerk United States District Court,
By JOSEPH P. BRADY,
Deputy Clerk U. S. District Court.

Certificate of United States District Judge.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

I, Edmund Waddill, Jr., Judge of the District Court of the United States for the Eastern District of Virginia do hereby certify that the foregoing is a full and true transcript of the record and proceedings had before me in the therein entitled cause.

In witness whereof, I hereunto set my hand and seal of said Court at Richmond, this 18th day of July, A. D., 1906.

[Seal United States District Court.]

EDMUND WADDILL, JR.,
United States District Judge.

157 *Conclusions of the Court.*

Filed July 14th, 1906.

In the United States Circuit Court for the Eastern District of Virginia.

In the Matter of the Petition of FORTESQUE WHITTLE for Writs of *Habeas Corpus* and Certiorari.

FORTESQUE WHITTLE, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

Petitioner alleges that he is unlawfully deprived of his liberty. He prays that by virtue of the writ of *Habeas Corpus*, he may be discharged from custody. I find from the petition, from its exhibits, and from respondent's reply that petitioner has been committed to the Marshal of the Eastern District of Virginia by an order of the United States District Judge of that District, with directions to remove petitioner to the Middle District of Tennessee, in order that he may be there tried on an indictment in which he with others, is charged with a violation of the laws of the United States. The proceedings so resulting were conducted under the provisions of section 1014 of the Revised Statutes of the United States. The Judge so hearing the matter, and so issuing said order of removal, acted in conformity with like proceedings, as provided for in criminal actions in the state of Virginia, in which state petitioner resides, and where the application for his removal was made.

On the hearing of this petition, I am asked to permit peti-
158 tioner to offer testimony, the object of which is to show that probable cause does not exist as to petitioner's guilt of the offense of which he is charged; that he was not within the limits of the jurisdiction of the Middle District of Tennessee when said offense is alleged to have been committed; and testimony tending to show that he is innocent of the charge alleged in the indictment returned against him. Petitioner insists that he should not be removed to said Middle District of Tennessee for trial, but should be discharged from arrest. Should I, on this hearing, permit such testimony? I find from the record before me, that the indictment charges conspiracy; that it is alleged therein that petitioner with others, did in the Middle District of Tennessee, conspire to commit an offense against the laws of the United States. The indictment, in my judgment, sufficiently sets forth such offense. I find that it is in due form, and that it charges a crime; that it alleges a conspiracy such as is prohibited by the laws of the United States; and that an overt act, as described in the statute is charged as having taken

place in the Middle District of Tennessee. Such being the charge, I am of the opinion, under the law applicable thereto, that the personal presence of petitioner in said jurisdiction was not essential; and that he can be lawfully proceeded against in that district; and if the allegations set out in the indictment are sustained by competent evidence, that a conviction there can be upheld.

If such be the case, does it not follow that the testimony offered by the petitioner is immaterial? The indictment charges the commission of a crime; alleges that the petitioner with others committed it; and the laws authorizes his conviction in the district to which he has been ordered removed, if an overt act in pursuance of
159 said conspiracy was committed there. Technical objections to said indictment should not be considered by me on this hearing; they should only be heard by the court in which the indictment was returned.

While it is true that the order to remove for trial should only be issued in cases where probable cause has been shown, it is equally true that a certified copy of the indictment, with proof of the identity of the party accused, has been in a number of well considered cases, held to establish probable cause, and to authorize the warrant of removal. It must be conceded that the authorities are conflicting; but to my mind the path we should follow has been plainly indicated by the opinions of that great tribunal, whose mandates we all obey, whose judgments are the supreme law of the land. In Beavers *v.* Hanckel, 194 U. S., 73, the case rested on the efficacy of the indictment; for no other evidence of guilt was offered. The indictment was held to be *prima facie* evidence of the existence of probable cause. It satisfied the requirements of the constitution, and the laws made thereunder. Why should not the indictment in the case we now have under consideration serve the same purpose? The testimony tendered is, as I understand this case, immaterial, and the identity of the accused is admitted. His guilt or innocence is not to be ascertained by testimony offered in this jurisdiction, in connection with questions involved in the proceedings relating to the warrant of removal, or this writ of *habeas corpus*. That matter must go to the jury impaneled by the court in which the indictment was returned. To hold otherwise would result in inextricable confusion, and to discharge the petitioner on the showing now made, would tend to impede the due administration of justice; and can
160 only be done, in my opinion, by strained construction of the statutes.

The writ will be dismissed, and petitioner will be remanded to the custody of the Marshal.

NATHAN GOFF,
U. S. Circuit Judge.

July 14th, 1906.

Order Dismissing Petition and Discharging Writ of Habeas Corpus and Allowing Appeal.

Filed July 14th, 1906.

In the Circuit Court of the United States for the Eastern District of Virginia.

In the Matter of the Petition of FORTESQUE WHITTE for Writs of *Habeas Corpus* and Certiorari.

FORTESQUE WHITTLE, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

This cause was on this, the 14th day of July, 1906, heard before the Honorable, the Circuit Court of the United States for the Eastern District of Virginia, the Honorable Nathan Goff, Circuit Court Judge, Presiding, upon the petition of said Fortesque Whittle
161 in this cause and the return of the Marshal, the defendant, thereto, and the return of the District Judge of the Eastern District of Virginia (by agreement the copy of the findings and order of said District Judge being here now taken as his return to said writ of certiorari, and the motion of the petitioner, by his counsel, hereinafter mentioned.

The petition and the return of the Marshal thereto were read, and thereupon the petitioner presented himself as a witness and his counsel moved the Court that he be sworn in order to testify as such, and as such witness to prove the facts averred and set forth in said petition, which facts were then and there repeated and restated to the Court; and his counsel then also stated that the said witness, and other persons then present as witnesses, would testify and prove that the said facts set forth and averred in the petition and exhibits, and repeated by him to the Court, were true.

Thereupon the Honorable Edward T. Sanford, Special Counsel representing the United States, and also the defendant Marshal, objected to the swearing of the said petitioner as a witness and also to the admission of said evidence, upon the ground that said evidence was immaterial and irrelevant, and that it was not allowable to contradict or transverse by evidence in this Court the averments of the indictment which had been found against the petitioner in the Circuit Court of the United States for the Middle District of Tennessee, and that there was no error in the action of the District Judge. The objection so made was sustained, and the witness not allowed to be sworn nor allowed to testify to the facts above stated, to which action of the Court the petitioner then and there excepted.

162 Thereupon it was ordered and adjudged by the said Court that the petition be dismissed and the writ of *habeas corpus* heretofore issued in this cause upon the said petition be and the same is hereby dismissed and discharged; and that the said Fortesque Whittle be remanded to the custody of said Morkan Treat, U. S. Marshal, for the Eastern District of Virginia, to be dealt with by him according to the directions of the writ of the process under which he had custody of the said Fortesque Whittle.

Thereupon, the petitioner presented his petition, setting forth that he was aggrieved by the said order dismissing the said writ of *habeas corpus*, and praying that he be allowed to prosecute an appeal from said final order or judgment, to the Supreme Court of the United States under and according to the law of the United States in that behalf made together with his assignment of error in that behalf which appeal is allowed; and the petitioner having been allowed and the said appeal being hereby granted, the petitioner, by his counsel, thereupon moved the Court that he be enlarged or admitted to bail pending the decision of his said case upon said appeal; and thereupon it was accordingly ordered that the said petitioner and appellant be, and he is hereby enlarged upon his bond and admitted to bail, pending the said appeal to the Supreme Court of the United States; said bond to be in the penal sum of $5,000.00, to be taken and approved by the Clerk of this Court and conditioned for the said petitioner and appellant to appear before this Court to abide such order as shall be made by this Court upon the mandate of the Supreme Court of the United States upon the determination of petitioner's said appeal; and upon the execution by the said Fortesque Whittle of such bond, with surety or sureties, to be approved by the Clerk of this Court, he will be enlarged and admitted to bail. The Clerk will take as surety any satis-

163 factory guaranty company.

The opinion of the Court in dismissing the petition and discharging the writ of *habeas corpus* is made part of the record herein and will be copied by the Clerk in the transcript on appeal.

NATHAN GOFF,
U. S. Circuit Judge.

July 14, 1906.

Appearance Bond.

Filed July 14th, 1906.

In the Circuit Court of the United States for the Eastern District of Virginia.

In the Matter of the Petition of FORTESQUE WHITTLE for Writs of *Habeas Corpus* and Certiorari.

FORTESQUE WHITTLE, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

We, as principal, and American Surety Company of New York a guaranty and surety company, organized and existing under the laws of the State of New York, with power and authority to become surety for principals in appearance bonds, jointly and severally acknowledge ourselves to owe and to be bound to the United States of America in the penal sum of Five Thousand Dollars ($5,000.00), severally to be made and levied of our goods, chattels, lands and tenements, if default be made herein.

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The condition of this obligation is as follows: Whereas the said Fortesque Whittle, being detained in the custody of Morgan Treat, United States Marshal for the Eastern District of Virginia, under commitment and warrant of removal to the Circuit Court of the United States for the Middle District of Tennessee, granted by the Honorable Edmund Waddill, Jr., Judge of the District Court for the Eastern District of Virginia, presented his petition for and sued out a writ of *habeas corpus* from the Circuit Court of the United States for the Eastern District of Virginia, and the said writ of *habeas corpus* duly issued to the said Treat, Marshal, and he made his return thereto; and the said matter of *habeas corpus* came on for hearing before the said Circuit Court of the United States for the Eastern District of Virginia, on the 14th day of July, 1906, when by order thereof the said petition was dismissed and the said writ of *habeas corpus* discharged, and the said Fortesque Whittle remanded to the custody of the said Morgan Treat, Marshal, to be proceeded with as provided by law; and

Whereas, from the said final order dismissing the said petition and writ of *habeas corpus*, the said Fortesque Whittle prayed an appeal to the Supreme Court of the United States, which was granted and said appeal perfected; and

Whereas, the said Circuit Court of the United States allow- said appeal, ordered that pending said appeal the said Fortesque Whittle upon the execution of a bond in the penal sum of Five Thousand Dollars ($5000.00) conditioned as by said order was provided, might be enlarged and admitted to bail;

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Now, therefore, in compliance therewith, and in order to be so enlarged, the said Fortesque Whittle as principal, and the said American Surety Company of New York, as surety, execute this bond upon the condition that, if the said Fortesque Whittle shall duly personally appear in and before the Circuit Court of the United States for the Eastern District of Virginia, then and there to answer the exigency and determination of said appeal, and personally abide the final decision and determination of the said Supreme Court of the United States and of the said Circuit Court of the United States, upon the mandate of the said Supreme Court of the United States, and obey and abide the orders of said Circuit Court of the United States, and not depart without leave upon the conditions aforesaid, and upon the entry of said orders upon said appeal, then and in that event this bond or obligation shall be void; but otherwise it shall be and remain in full force and effect.

In witness whereof, the said Fortesque Whittle as principal, and the said American Surety Company of New York as surety, the said surety being represented by and through Robert Le Masurier, its duly authorized agent and attorney, have hereunto on this the 14th day of July, 1906, set their hands.

FORTESQUE WHITTLE. [SEAL.]

[Seal of American Surety Company.]

AMERICAN SURETY COMPANY OF NEW YORK,
By ROB'T LE MASURIER, *Agent.*

Signed, sealed and delivered in the presence of
JOSEPH P. BRADY, *Clerk.*

166 *Notice of Appeal.*

Filed July 14th, 1906.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of FORTESQUE WHITTLE for Writs of *Habeas Corpus* and Certiorari.

FORTESQUE WHITTLE, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia; JOSEPH P. BRADY, Deputy Clerk of the District Court of the United States for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

SIRS: Please take notice that Fortesque Whittle petitioner above named hereby appeals to the Supreme Court of the United States from the final order made and entered on the 14th day of

July, 1906, by the Honorable Nathan Goff, Judge of the Circuit Court of the United States, Fourth Judicial Circuit of Virginia, discharging his application for writs of *habeas corpus* and certiorari and from each and every part of said order.

Dated at the City of Richmond, State of Virginia, on the 14th day of July, 1906.

Respectfully,

JOHN J. VERTRESS,
JAMES C. BRADFORD,
JOHN S. MILLER,
Attorneys for Petitioner and Appellant.

167 *Petition for Appeal.*

Filed July 14th, 1906.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of FORTESQUE WHITTLE for Writs of *Habeas Corpus* and Certiorari.

FORTESQUE WHITTLE, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

The petition of the above named petitioner Fortesque Whittle for an order, allowing an appeal to the Supreme Court of the United States from the final order in the above styled cause, discharging the writs of *habeas corpus* and certiorari in this cause and remanding petitioner to the custody of the said Morgan Treat, United States marshal.

Fortesque Whittle, the petitioner and appellant above named, feeling himself aggrieved by the final order heretofore made and entered by this Court in this cause on the 14th day of July, 1906, whereby it was ordered that his petition for a writ of *habeas corpus*, directed to said Morgan Treat, United States Marshal, in and for the said District of Virginia, and his writ of certiorari, directed to Hon. Edmund Waddill, Jr., United States District Judge for said
168 District, commanding him to return all the proceedings, warrants, depositions, examinations, commitments and record of all proceedings against your petitioner to the Circuit Court of the United States, were, after the same had been duly granted and return made thereon by this Honorable Court, discharged, and petitioner was by said order remanded to the custody of said Morgan Treat, United States Marshal, as aforesaid.

Now come, Jno. J. Vertress and Jas. C. Bradford, his attorneys

and counsel, praying this court for an order allowing your petitioner to prosecute an appeal from said final order of the United States Circuit Court to the Supreme Court of the United States, and according to the laws of the United States in that behalf made.

Your petitioner is advised by his counsel that *in* the proceedings referred to in the petition for writs of *habeas corpus* and certiorari, and the said order discharging the same have infringed the constitutional rights of your petitioner and that the commitment of your petitioner and the restraint of his person referred to in said petition and under said order is without authority of law and that the said United States District Judge acting as United States Commissioner, before whom your petitioner was arraigned, as set forth in said petition hereinbefore referred to had no jurisdiction to either require bail of petitioner or to commit petitioner in default thereof, and your petitioner desires in good faith to submit the constitutional questions and other questions involved to the Supreme Court of the United States for their determination.

And your petitioner will ever pray, etc.

JOHN J. VERTRESS,
JAMES C. BRADFORD,
JOHN S. MILLER,
Attorneys for Petitioner and of Counsel.

169 UNITED STATES OF AMERICA, *Eastern District of Virginia:*

Fortesque Whittle, being duly sworn on his oath, deposes and says that he is the petitioner above named, that the foregoing petition is true of his own knowledge, except as to those matters which are therein stated on his information and belief, and as to those matters, he believes them to be true.

——— ———.

Sworn to before me this 14th day of July, 1906.

JOSEPH P. BRADY,
Clerk of the United States Circuit Court,
Eastern District of Virginia.

Assignment of Errors.

Filed July 14th, 1906.

In the Supreme Court of the United States.

In the Matter of the Petition of FORTESQUE WHITTLE for Writs of *Habeas Corpus* and Certiorari.

FORTESQUE WHITTLE, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

The petitioner, Fortesque Whittle, by John J. Vertress and
170 Jas. C. Bradford and John S. Miller, his Counsel in connection with his petition of appeal herein, entered herein, to the Supreme Court of the United States, from the final order made and entered in the United States Circuit Court of the Fourth Judicial Circuit in and for the Eastern District of Virginia, discharging the writs of *Habeas Corpus* and certiorari and remanding petitioner to the custody of the said Morgan Treat, Marshal, *and* makes and files the following assignment of errors:

1. The court erred in discharging the petitioner's writs of *Habeas Corpus* and Certiorari and remanding him to the custody of the United States Marshal.

2. In refusing to grant the prayer of said writs.

3. In refusing to discharge said petitioner.

4. In holding that the restraint of the petitioner's liberty is legal.

5. In holding that the restraint of your petitioner is not in violation of his substantial rights.

6. In holding that said alleged indictment or any count thereof stated an offence against the laws of the United States.

7. In holding that the alleged indictment, or any count thereof was sufficient upon which to base a warrant of removal.

8. In holding that there was sufficient evidence of probable cause.

9. In holding that the warrant of removal made by the United States District Judge for the Eastern District of Virginia was issued upon the finding of probable cause; and in not holding that said order & warrant of removal were unauthorized & void because said District Judge refused to receive or hear any evidence offered by petitioner.

10. In holding that the alleged indictment with proof of
171 identity was conclusive evidence of probable cause.

11. In holding that upon the introduction in evidence of the alleged indictment with proof of identity that the defendant, your petitioner, was not entitled to introduce evidence offered by him and in refusing to hear or receive evidence offered by him to

show that the alleged offence, charged in said indictment and in each count thereof had not been committed by him in the State of Tennessee, in which state the indictment was found and in so holding, violating Article V and Article VI of the Amendments to the Constitution of the United States in that he was deprived of his liberty without due process of law.

12. In failing to hold that your petitioner is deprived of his liberty without due process of law in violation of Article V of the Amendments to the Constitution of the United States, in that said District Judge refused to hear or receive any evidence offered by your petitioner in that the complaint and evidence referred to herein, which were the sole authority for the petitioner's arrest and commitment as aforesaid failed to charge the petitioner with any crime against the laws of the United States.

13. In failing to hold that the petitioner's detention was in violation of Article V of the amendments to the Constitution of the United States in that the said United States District Judge, sitting as United States Commissioner and the United States District Judge has such jurisdiction to order the arrest and commitment of your petitioner, and that your petitioner is held to answer for a crime without any sufficient or valid indictment of a grand jury.

14. In failing to hold that restraint of your petitioner is in violation of Article IV of the Amendments to the Constitution of the United States, because it appears from the indictment upon
172 which the warrant in this case was issued that it was wholly void.

15. In failing to hold — the restraint of your petitioner is in violation of the provisions of Article IV of the amendments to the Constitution of the United States for the reasons particularly specified in his petition for a writ of *habeas corpus*.

16. In holding that a warrant of removal should issue for the reason that the proceedings conclusively show, by the indictment that the venue for the facts alleged in the indictment is not and was not in the Middle District of the State of Tennessee or in the State of Tennessee.

17. In failing to hold that the restraint of your petitioner is in violation of the provisions of Article VI of the amendments to the constitution of the United States for the reason that upon the proof offered to be made and rejected by the United States District Judge, sitting as a commissioner, and the United States District Judge and this Honorable Court, sitting upon the hearing of the petition of *habeas corpus*, and by the averments of said petition which were not controverted, it was conclusively shown that the offences charged in the indictment were not committed in the Middle District of the State of Tennessee or in the State of Tennessee, and that he could not be lawfully tried by a jury of the State of Tennessee and of the Middle District of Tennessee where said indictment was found.

18. In holding that the warrant of removal was properly issued, as the record and proceedings conclusively show that the alleged offence, complained of in the indictment and the several counts thereof, did not occur within the Middle District of the State of

Tennessee, or in the State of Tennessee, and that your pe-
173 titioner did not conspire to commit any offence within the State of Tennessee, or in the Middle District thereof.

19. In holding that your petitioner was lawfully in the custody of said Morgan Treat, United States Marshal in and for the Eastern District of Virginia, and was lawfully deprived of his liberty by him by due process of law.

20. For other errors appearing on the record, by reason whereof, the petitioner prays that the said order, discharging said writs of *Habeas Corpus* and Certiorari be reversed and the petitioner discharged from custody.

JOHN J. VERTRESS,
JAMES C. BRADFORD,
JOHN S. MILLER,
Attorneys for Petitioner and Appellant.

Appeal Bond.

Filed July 14th, 1906.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of FORTESQUE WHITTLE for Writs of *Habeas Corpus* and Certiorari.

FORTESQUE WHITTLE, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

174 Know all men by these presents, that, we, Fortesque Whittle and James G. Tinsley his surety, are held and firmly bound unto the United States of America, in the full and just sum of Five hundred dollars to be paid to the United States, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this 14th day of July, 1906.

Whereas, lately, to-wit; on the 14th day of July, 1906, at the Circuit Court of the United States, in and for the Fourth Judicial Circuit, Eastern District of Virginia, in a proceeding therein pending, an order was entered discharging the writs of *habeas corpus* and certiorari, of the above named petitioner in the above mentioned proceeding and said petitioner having duly obtained an appeal from the said order to the Supreme Court of the United States and filed a copy thereof in the Clerk's office of said Circuit Court to review the same,

Now, the Condition of the Above Obligation, is such, that if the said petitioner Fortesque Whittle, shall prosecute said appeal to effect and shall answer all costs if he should fail to make said appeal good, then this obligation to be void; else to remain in full force and effect.

FORTESQUE WHITTLE. [SEAL.]
JAMES G. TINSLEY. [SEAL.]

Sealed, and delivered, and taken and acknowledged, this 14th day of July, 1906, before me,

JOSEPH P. BRADY, *Clerk.*

UNITED STATES OF AMERICA,
Eastern District of Virginia, To wit:

175 James G. Tinsley being duly sworn says that he is worth more than the sum of Five Hundred Dollars, over and above all his just debts and liabilities.

Sworn to before me this 14th day of July, 1906.

JOSEPH P. BRADY, *Clerk.*

Citation.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of FORTESQUE WHITTLE for Writs of *Habeas Corpus* and Certiorari.

FORTESQUE WHITTLE, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia; JOS. P. BRADY, Deputy Clerk of the District Court of the United States for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Judge L. L. Lewis, United States District Attorney for the Eastern District of Virginia; Jos. P. Brady, Clerk of the United States Circuit Court for the Eastern District of Virginia; Morgan Treat, United States Marshal in and for the Eastern District of Virginia; Hon. Edmund
176 Waddill, Jr., United Stated District Judge for the Eastern District of Virginia, and Jos. P. Brady, Deputy Clerk of the United States District Court for the Eastern District of Virginia:

You are cited and admonished to be and appear at the Supreme Court of the United States at the City of Washington, within thirty

days from the date of this writ, pursuant to an appeal duly allowed by the Circuit Court for the Fourth Judicial Circuit, Eastern District of Virginia and filed in the Clerk's Office of said Court on the 14th day of July, 1906, in the cause entitled, in the matter of the petition of Fortesque Whittle for writs of *habeas corpus* and certiorari, Fortesque Whittle, appellant, *versus*, Morgan Treat, United States Marshal in and for the Eastern District of Virginia, Jos. P. Brady, Deputy Clerk of the District Court of the United States in and for said Eastern District of Virginia, and Hon. Edmund Waddill, Jr., United States District Judge in and for said Eastern District of Virginia, Appellees, to show cause, if any, why the final order of said Circuit Court, rendered against the appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Hon. Nathan Goff, Judge of the United States Circuit Court, this 14th day of July, A. D., 1906.

NATHAN GOFF,
Judge of the Circuit Court of the United States.

Acceptance of Service by United States District Judge.

Legal service of the within Citation is hereby acknowledged this 21st July, 1906.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

177 *Marshal's Return.*

Executed this 23rd day of July 1906, by delivering in person in the City of Richmond, Va., a true copy of the within citation to the following named persons viz: L. L. Lewis United States District Attorney for the Eastern District of Virginia, Joseph P. Brady Clerk of the United States Circuit Court for the Eastern District of Virginia, Joseph P. Brady Deputy Clerk of the United States District Court for the Eastern District of Virginia.

MORGAN TREAT,
United States Marshal.

Further executed this 23rd day of July 1906, by delivering in person in the City of Richmond, Va. to Morgan Treat United States Marshal for the Eastern District of Virginia, a true copy of this citation.

MORGAN TREAT,
United States Marshal,
By M. J. ENRIGHT,
Office Deputy Marshal.

178 *Order Transmitting Record.*

And thereupon, it is ordered by the Court here that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the Supreme Court of the United States of America, and the same is transmitted accordingly.

Teste:

JOSEPH P. BRADY,
Clerk United States Circuit Court.

Clerk's Certificate.

THE UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

I, Joseph P. Brady, Clerk of the Circuit Court of the United States for the Eastern District of Virginia, do hereby certify that the foregoing is a full and true transcript of the record and proceedings of the said Circuit Court, together with all things thereunto relating, in the therein entitled cause.

In testimony whereof, I hereunto set my hand and affix the seal of the said Circuit Court of the United States for the Eastern District of Virginia, at Richmond, this 10th day of August, A. D., 1906.

[Seal United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Endorsed on cover: File No. 20,338. E. Virginia C. C. U. S. Term No. 373. Fortesque Whittle, appellant, *vs.* Morgan Treat, United States marshal in and for the eastern district of Virginia, *et al.* Filed August 14, 1906. File No. 20,338.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 374.

FRANK E. WILCOX, APPELLANT,

vs.

MORGAN TREAT, UNITED STATES MARSHAL IN AND FOR THE EASTERN DISTRICT OF VIRGINIA, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

FILED AUGUST 14, 1906.

(20,339.)

(20,339.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906.

No. 374.

FRANK E. WILCOX, APPELLANT,

vs.

MORGAN TREAT, UNITED STATES MARSHAL IN AND FOR THE EASTERN DISTRICT OF VIRGINIA, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 10, 1906.

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a In the Supreme Court of the United States.

In re Petition of FRANK E. WILCOX for Writs of *Habeas Corpus* and Certiorari.

FRANK E. WILCOX, Appellant,

vs.

MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia; Jos. P. BRADY, Deputy Clerk of the District Court of the United States for the Eastern District of Virginia, and Hon. EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Judge L. L. Lewis, United States District Attorney for the eastern District of Virginia; Jos. P. Brady, Clerk of the United States Circuit Court for the eastern district of Virginia; Morgan Treat, United States Marshal in and for the eastern District of Virginia; Hon. Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia, and Jos. P. Brady, Deputy Clerk of the United States District Court for the eastern District of Virginia:

You are cited and admonished to be and appear at the Supreme Court of the United States at the City of Washington, within thirty days from the date of this writ, pursuant to an appeal duly allowed by the Circuit Court for the Fourth Judicial Circuit, Eastern District of Virginia, and filed in the Clerk's office of said Court on the 14th day of July, 1906, in the cause entitled, in the matter of the
b petition of Frank E. Wilcox for writs of *habeas corpus* and certiorari, Frank E. Wilcox, appellant, *versus* Morgan Treat, United States Marshal in and for the eastern District of Virginia, Jos. P. Brady, Deputy Clerk of the District Court of the United States in and for said eastern District of Virginia, and Hon. Edmund Waddill, Jr., United States District Judge, in and for said Eastern District of Virginia, Appellees, to show cause, if any, why the final order of said Circuit Court, rendered against the appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Hon. Nathan Goff, Judge of the United States Circuit Court, this 14th day of July, A. D., 1906.

NATHAN GOFF,
Judge of the Circuit Court of the United States.

c Legal service of the within citation is hereby acknowledged this 21st July, 1906.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

Executed this 23rd day of July 1906 by delivering in person in the City of Richmond, Va. a true copy of the within citation to the following named persons viz: L. L. Lewis United States District Attorney for the Eastern District of Virginia, Joseph P. Brady Clerk of the United States Circuit Court for the Eastern District of Virginia, Joseph P. Brady Deputy Clerk of the United States District Court for the Eastern District of Virginia.

MORGAN TREAT,
United States Marshal.

Marshal's Fees for service $6.00.

Further executed this 23rd day of July 1906 by delivering in person in the City of Richmond, Va. to Morgan Treat United States Marshal for the Eastern District of Virginia, a true copy of this citation.

MORGAN TREAT,
United States Marshal,
By M. J. ENRIGHT,
Office Deputy Marshal.

Marshal's Fees for service $2.00.

d [Endorsed:] No. —. Circuit Court of the U. S., Eastern District of Virginia. In the matter of the Petition of Frank E. Wilcox for Writs of *Habeas Corpus* and Certiorari. Frank E. Wilcox, Appellant, *vs.* Morgan Treat, United States Marshal &c., *et als.*, Appellees. Citation. Filed this 14th day of July, 1906. Joseph P. Brady, Clerk.

1 *Transcript of Record.*

THE UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

At a Circuit Court of the United States for the Eastern District of Virginia, begun and held at the Court Rooms in the Custom House, in the City of Richmond, Virginia, on the first Monday in April, being the second day of the same month, in the year of our Lord one thousand, nine hundred and six.

Present: The Honorable Nathan Goff, Judge of the Circuit Court of the United States for the Eastern District of Virginia.

Among other were the following proceedings, to-wit:

In the Matter of the Petition of FRANK E. WILCOX for Writs of *Habeas Corpus* and Certiorari.

FRANK E. WILCOX, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

2 *Petition for Writs of Habeas Corpus and Certiorari.*

Filed July 14, 1906.

In the Circuit Court of the United States for the Eastern District of Virginia.

In the Matter of the Petition of FRANK E. WILCOX for Writs of *Habeas Corpus* and Certiorari.

FRANK E. WILCOX, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

To the Honorable the Judges of the Circuit Court of the United States for the Eastern District of Virginia:

The Petition and Complaint of Frank E. Wilcox respectfully shows to the Court:

1.

That your Petitioner is a citizen of the United States, and is a citizen and resident of the Eastern District of Virginia and is unlawfully imprisoned and restrained of his liberty by Morgan Treat, United States Marshal for the Eastern District of Virginia, in the City of Richmond, and County of Henrico, in said District. That your petitioner is held by said Marshal under color and claim of authority of the United States, by virtue of a warrant for removal claimed to have been issued under section 1014 of the Revised Statutes of the United States, dated July 14, 1906, signed by the Honorable Edmund Waddill, Jr., Judge of the District Court of the United States for the Eastern District of Virginia, and
3 has been committed and is detained only under and by virtue of said warrant, and not by virtue of any judgment, decree or final order of any court.

2.

On the 14th day of July, 1906, at the said City of Richmond, in said District, complaint in writing signed and sworn

to by Morgan Treat, United States Marshal in and for said District, a copy of which is hereto attached, marked "Exhibit A," and made part hereof, was presented to the Honorable Edmund Waddill, Jr., Judge of the District Court of the United States for the said District, in and by which it was averred that he, the said Morgan Treat, United States Marshal, had good cause to believe and did believe that your petitioner, Frank E. Wilcox has been indicted by the Grand Jury of the Circuit Court of the United States in and for the Middle District of Tennessee, for that your petitioner on the 8th day of July, 1903, and during the period of time from that date until and on the first day of September, 1905, and being during said period Sales Agent of the Virginia-Carolina Chemical Company, a corporation existing under the laws of the State of New Jersey, did in said Middle District of Tennessee, unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section 1 of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and that on the 8th day of July, 1903, at and within the County of Davidson in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, your petitioner did unlawfully conspire with divers other persons and corporations to commit an offense against the United States, to-wit: The offense of engaging in a combina-

4 tion in restraint of trade and commerce among the several States of the United States, all as more fully set out in an indictment filed in the said Circuit Court of the United States in and for the Middle District of Tennessee on May 25th, 1906, a certified copy of which indictment said complaint states was thereto attached and made a part of said complaint, and in and by which said complaint, said complainant did, therefore, charge that your petitioner did commit the said offense against the United States in the manner and form as set forth in said indictment, and did furthermore aver in said complaint upon information and belief, that in pursuance of an order of the said Circuit Court of the United States for the Middle District of Tennessee, a Bench Warrant had been issued from said Court for the arrest of your petitioner and delivered to the Marshal of the said Court, who, after due search, had returned said warrant "Not found" in said Middle District of Tennessee and that your petitioner is now believed to be within the Eastern District of Virginia, of which District he is a resident.

And said complainant, said Morgan Treat, United States Marshal, in and by said complaint did therefore pray that your petitioner might be arrested, imprisoned, and removed or bailed, as the case might be, for trial before said Circuit Court of the United States for the Middle District of Tennessee, and further dealt with according to law; all of which will appear from the said complaint, a copy of which is hereto attached as aforesaid, reference thereto being hereby made for greater certainty. And that thereupon, to-wit, on the said 14th day of July, 1906, a warrant for his arrest was issued by the Honorable Edmund Waddill, Jr., Judge as afore-

said, upon the aforesaid complaint, which came to the hands
5 of the *hands of the* said Morgan Treat, Marshal as aforesaid, and he, in obedience thereto, arrested your petitioner and brought him before the said the Honorable Edmund Waddill, Jr., Judge as aforesaid, and made return of said warrant, endorsed thereon, and a copy of said warrant with the endorsement thereon is hereto attached marked "Exhibit B" and made a part hereof.

3.

That thereupon then and there, the United States Attorney in and for the said Eastern District of Virginia, for and on behalf of the United States, did offer and introduce in evidence to and before the said Judge, in support of the averments of the said complaint of said Morgan Treat, United States Marshal, a certified copy of the said indictment mentioned and referred to in the said complaint. A certified copy of said indictment so offered and introduced in evidence is hereto attached, marked "Exhibit C," and made a part hereof, and the identity of your petitioner with and as the said Frank E. Wilcox mentioned and referred to in said indictment as one of the defendants therein, having been then and there admitted by your petitioner, the Government, the United States of America, introduced or offered no other or further proof or evidence in support of the said complaint or of the averments therein, but rested its case upon the said hearing of the said complaint before the said Judge.

4.

That thereupon, then and there, your petitioner, by his counsel, proceeded to offer, and offered, proof and evidence by witnesses then and there present to show that your petitioner did not within the said Middle District of Tennessee, on the 8th day of July, 1903, or during the period between the 8th day of July, 1903, and the 1st day of September, 1905, or at any other time, engage
6 in the said alleged conspiracies in the said indictment mentioned, or any or either of them, or at any time or at any place, join in or assent to the said alleged conspiracies, engaged in or entered upon in said Middle District of Tennessee, or any or either of them, or at any time or at any place do any act in furtherance of, or to effect the object of said alleged conspiracies engaged in in said Middle District of Tennessee, or any or either of them. Thereupon, then and there, the Counsel for the Government, upon the said hearing, did object to the introduction on the behalf of your petitioner of the said evidence or any evidence or proof tending to contradict or controvert the respective averments, or any or either of them in the said indictment and in the respective counts thereof, viz: that your petitioner did engage in the said alleged conspiracy in said indictment mentioned and referred to, in the said Middle District of Tennessee, in manner and form as in the said indictment in that behalf aver-ed, or to contradict or controvert or disprove any of the averments in the said indictment contained,—on the ground, then and there stated, that upon the said

hearing of said complaint the said certified copy of the said indictment was conclusive evidence of every fact therein averred to sustain and prove upon the said hearing the said complaint of the said Morgan Treat, United States Marshal, and the averments thereof, and the probable cause of the commission by your petitioner of the said supposed offenses in the said indictment mentioned and of any and every of them in the manner and form as in the said indictment aver-ed and in that behalf, your petitioner then and there took the witness stand and demanded to be sworn as a witness in his own behalf, but the Counsel for the Government objected, and the objection was by said Judge sustained, and he was not permitted
7 to be sworn or to testify.

5.

That thereupon, then and there, your petitioner by his counsel stated to the Judge that he would prove, and then and there his said counsel offered to prove by your petitioner as a witness and by other witnesses then and there present, the following facts, which facts are true, that is to say: That the said Frank E. Wilcox has not been within the State of Tennessee for the period of seven years next preceding the 14th day of July, 1906, and neither has he through himself or any agent ever done any business of any kind in the State of Tennessee, within seven years next preceding the 10th day of July, 1906, that he has never at any time, made, entered into or engaged in any of the conspiracies mentioned in the said indictment or any other conspiracy within the Middle District of Tennessee, nor did he by or through any agent or agents, attorney or attorneys, do or attempt to do within the said Middle District of Tennessee any of the matters and things alleged and aver-ed in said indictment to have been done by him and the other defendants named therein; nor did he personally or by any agent or attorney join in or assent to said alleged conspiracies or any of them in the Middle District of Tennessee or at any time or any place do any act in furtherance thereof, or to effect the objects of said alleged conspiracies or any of them in the Middle District of Tennessee.

That the United States Attorney, on behalf of the Government, then and there objected to the introduction or reception by the said Judge of the said evidence so offered on behalf of your petitioner, and to each and every part thereof, on the ground hereinbefore stated, which objection was then and there sustained by the Court, on the ground that the said certified copy of the said indict-
8 ment so introduced on behalf of the Government, the identity of your petitioner as aforesaid being admitted by your petitioner as aforesaid, was conclusive evidence of the existence of every fact stated in the indictment, including the averments that the conspiracies alleged in the said indictment were engaged in in the Middle District of Tennessee, and that therefore said evidence or any evidence offered by and on behalf of your petitioner to controvert, contradict or disprove the averments of the said indictment in that behalf, or any or either of them, was incompetent and inadmissible; and the said Judge, then and there, on the grounds aforesaid,

excluded and refused to receive said evidence so offered on behalf of your petitioner, or any part thereof, to which ruling of the Judge, your petitioner then and there, by his counsel, duly excepted.

7.

That thereupon the said Judge, upon the complaint and upon the evidence so introduced for and on behalf of the Government as aforesaid, made and signed a certain order reciting his said rulings as aforesaid and ordering as in said order appears, which said order is as follows:

THE UNITED STATES OF AMERICA,
Eastern District of Virginia:

THE UNITED STATES
vs.
FRANK E. WILCOX.

This is an application under the provisions of section 1014 of the United States Revised Statutes for a warrant for the removal of Frank E. Wilcox to the Middle District of Tennessee and
9 comes before me as follows:—

The District Attorney for this District, together with Mr. E. T. Sandford, Counsel for the United States, presented to me, a verified complaint of Morgan Treat, United States Marshal for this District, with the certified copy of an indictment filed on May 25th, 1906, in the Circuit Court of the United States for the Middle District of Tennessee in the case of the United States *vs.* Virginia-Carolina Chemical Company and other defendants, including among such defendants the said Frank E. Wilcox.

Said complaint and copy of said indictment are made parts of this order.

Upon the exhibition of this indictment and affidavit and the *ex parte* motion of the counsel for the United States, I made an order for the arrest of said Frank E. Wilcox and his production before me.

This order was duly executed by the said Marshal who arrested the said Frank E. Wilcox and brough- him before me in Richmond on this 14th day of July, 1906, as shown by his return. When the accused was so brought before me it was moved by the Counsel for the United States that inasmuch as the indictment charged offenses against the United States triable in the Circuit Court of said United States for the Middle District of Tennessee, and the identity of the defendant was admitted, that an order be forthwith made for the commitment of said Frank E. Wilcox for trial before the said Circuit Court.

This motion was made upon the certified copy of the indictment without any further testimony, the identity of the party arrested and brought before me as the Frank E. Wilcox mentioned in the indictment being admitted.

And thereupon the defendant, Frank E. Wilcox, offered himself as witness in his own behalf, and being about to be sworn, the United States, by its Counsel, thereupon objected to the witness being sworn, or to any testimony being given in rebuttal of the indictment in these proceedings, on the ground that the identity of the defendant being admitted, inasmuch as the indictment on its face charges offenses against the United States committed and triable in the jurisdiction in which the defendant stands indicted, no evidence is admissible here to impeach the indictment, and the order of commitment should be made without other proof.

The defendant's counsel thereupon offered to prove by the defendant, and other witnesses then and there present, that the Circuit Court for the Middle District of Tennessee had no jurisdiction over the person of said defendant touching the offense charged in said indictment, in that defendant and said other witnesses would, if permitted, testify that said Frank E. Wilcox has not been within the State of Tennessee for the period of seven years next preceding the 10th day of July, 1906, and neither has he through himself or any agent ever done any business of any kind in the State of Tennessee within seven years next preceding the 14th day of July, 1906, and that he has never at any time made, entered into or engaged in any of the conspiracies mentioned in the said indictment or any other conspiracy within the Middle District of Tennessee, nor did he by or through any agent, attorney or attorneys do or attempt to do within the said Middle District of Tennessee any of the matters and things alleged and aver-ed in said indictment to have been done by him and the other defendants named therein; Nor did he personally, or by any agent or attorney join in or assent to said alleged conspiracies, or any of them in the Middle District of Tennessee, or at any time or any place do any act in furtherance thereof or to effect the objects of said alleged conspiracies or any of them in the Middle District of Tennessee. Nor has defendant done, or performed, or been engaged in, of *of* a party to the same, or any of them in any other place or places at any other time or times whatsoever, in the said District.

Thereupon counsel for the Government renewed its objections as aforesaid.

After hearing counsel on both sides the Court announced its conclusions as follows:—

"The conclusion reached by the Court is that in a proceeding for the arrest and the removal of persons charged with a violation of the laws of the United States pursuant to section 1014 of the Revised Statutes of the United States, before a United States District Judge, sitting in the State of Virginia, in which state there no longer exists the right of a preliminary examination upon a crime charged prior to the trial upon the merits, when said Judge is called upon to act as well in the matter of the apprehension of such persons, as in their removal to the jurisdiction in which they have been indicted, that upon the Government's presentation of a sufficient indictment regularly found by a grand jury in a court of the United States, properly

charging the commission of an offense within the district in which such indictment is found, coupled with proof of the identity of the person indicted, it is its duty to properly bail such person for appearance before the court in which he is indicted, or cause him to be removed thereto."

Therefore it was ordered that the testimony offered is inadmissible, and will not be received, and I therefore made the following order:

UNITED STATES OF AMERICA,
Eastern District of Virginia, set:

12 The within named Frank E. Wilcox having been brought before me, and identified; and it appearing by a duly authenticated copy of an indictment that he stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al,*" for violation of section one of the act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States, it is ordered that the said Frank E. Wilcox give bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial before said Court under the said indictment; or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee, to be there dealt with according to law.

Richmond, Va., July 14th, 1906.

(Signed) EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

And after said order had been made and the defendant declined to give bond, the Counsel for the United States moved that the warrant do issue directed to the Marshal of this District for the imprisonment and removal of the said Frank E. Wilcox to the Middle District of Tennessee, and his delivery to the custody of the United States Marshal of that District.

On such motion counsel for the said Frank E. Wilcox ob-
13 jected and again offered the said Frank E. Wilcox as a witness, together with the other witnesses herebefore referred to, to establish the same matters and facts as hereinbefore stated with regard to the objection to the order for the commitment of the said Frank E. Wilcox which testimony was again offered and was again objected to by the counsel for the United States on the same grounds above set forth, and on the further ground that these matters could not now be inquired of in this stage of the proceedings, and was again excluded by the Court, to all of which counsel for the said Frank E. Wilcox duly excepted and had the exceptions noted and entered.

EDMUND WADDILL, JR., *Judge.*

I therefore issued a warrant directed to the Marshal as follows:

Warrant of Imprisonment and Removal.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The President of the United States to the United States Marshal of the Eastern District of Virginia, Greeting:

Whereas it has been made to appear that Frank E. Wilcox stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled: "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," for violation of section one of the act of Congress entitled "An act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States; and whereas the said Frank E. Wilcox having been brought before me, and identified; and a certi-
14 fied copy of said indictment furnishing probable cause to believe him guilty as therein charged, and whereas it was thereupon ordered by me that said defendant give bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial under said indictment, or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee to be there dealt with according to law; and the said defendant having failed and refused to give bail as required, therefore;

You are hereby commanded in the name and by the authority of the said United States to imprison the said Frank E. Wilcox in accordance with law, and that with all convenient speed you remove him hence to the said Middle District of Tennessee and there surrender him to the Marshal of that District, there to be dealt with according to law.

Richmond, Va., July 14, 1906.

EDMUND WADDILL, JR.,

U. S. District Judge for the Eastern District of Virginia.

Richmond, Va., July 14th, 1906.

EDMUND WADDILL, JR.,

U. S. District Judge for the Eastern District of Virginia.

8.

Your petitioner further says that he is advised, and he charges and submits, that under and by virtue of Clause 3, of Section 2, of Article 3, of the Constitution of the United States, and of the Sixth Amendment to the said Constitution, your petitioner is entitled to be tried and can only be indicted and tried for any alleged offenses against the Laws of the United States, in the State and District in which the offense, which the indictment charges, was committed;

that the said supposed offenses in the said indictment mentioned and charged, were not, nor was any or either of them, committed
15 in the said Middle District of Tennessee; that none of the alleged acts, transactions, matters or things made which are in the said indictment mentioned or referred to as being and constituting the supposed engaging by this defendant in the said alleged conspiracies in the said indictment referred to, or any or either of them, were done or held or took place within the said Middle District of Tennessee, and no alleged act, transaction, matter or thing, in the said indictment mentioned or referred to as being the doing by this defendant of an act to effect the object of said conspiracy was done or held or took place within the Middle District of Tennessee; that he has not been within the State of Tennessee for the period of seven years next preceding the 10th day of July, 1906 and neither has he through himself or any agent ever done any business of any kind in the State of Tennessee, within seven years next preceding the 14th day of July, 1906, and that he has never at any time made, entered into, or engaged in any of the conspiracies mentioned in *in* the said indictment or any other conspiracy within the Middle District of Tennessee, nor did he by or through any agent, attorney or attorneys, do or attempt to do, within the said Middle District of Tennessee any — the matters and things alleged and aver-ed in said indictment to have been done by him and the other defendant- named therein; nor did he personally, or by any agent or attorney, join in or assent to said alleged conspiracies or any of them in the Middle District of Tennessee or at any time or any place do any act in furtherance thereof or to effect the objects of said alleged conspiracies or any of them in the Middle District of Tennessee, that he did not do in the Middle District of Tennessee any act in pursuance of the said alleged conspiracies in the said indictment mentioned, or any or either of them, in furtherance of
16 the said alleged conspiracies in said indictment mentioned, or any or either of them, or to effect the object of the same, or as an act on the part of your petitioner of engaging in the same.

9.

That thereupon, the United States Attorney moved the commitment of your petitioner to the Marshal of the said District for removal to the Middle District of Tennessee for trial upon the indictment in the United States Circuit Court for said District, and the said Attorney for the United States thereupon made a motion before the Honorable Edmund Waddill, Jr., Judge, for the issuance of a warrant for the removal of your petitioner to the Middle District of Tennessee for trial as aforesaid in the United States Circuit Court for said District upon the said indictment, and the said motion was allowed, and said warrant was in pursuance thereof issued by the said Judge, and a copy thereof is embraced in the order of the said Judge hereinbefore recited as and made a part hereof. That thereupon the said Marshal of the Eastern District of Virginia, to whom the said warrant was directed, took your petitioner into custody upon the said warrant and now holds your petitioner thereunder and threatens to take and remove your petitioner to

the Middle District of Tennessee, as directed by the said warrant and will do so, unless your Honor shall issue the writ of *Habeas Corpus* herein prayed for. Your petitioner further says that in case your petitioner is removed under the said warrant to the said Middle District of Tennessee for trial upon said indictment and is there held for trial and tried upon said indictment, your petitioner will not be tried within the District in which the said alleged offenses charged in the said indictment were committed, as required by the Sixth
17 Amendment to the Constitution of the United States, and by Clause 3, of Section 2, of Article 3 of said Constitution, and will be tried in violation of his rights under said provisions of the said Constitution. Your petitioner further says that he is advised, and he charges, that the said indictment does not charge the commission by your petitioner of any offense against the Laws of the United States, and that same is in that behalf insufficient and void.

10.

That the imprisonment and detention of your petitioner is without authority of law, and the said proceedings before said United States District Judge are illegal and the said warrant and removal was illegally issued and in violation of Article 3, Section 2, of the Federal Constitution, and of the Sixth Amendment to the said Constitution; and that then and there by the said rulings of the said District Judge, in the exclusion of the said evidence and in holding that the said certified copy of the indictment was conclusive evidence as aforesaid, and in refusing to permit your petitioner to introduce any evidence on his behalf, as aforesaid, your petitioner was deprived of rights secured to him by the said provisions of the said Constitution and by section 1014 of the Revised Statutes, and was and is by said Morgan Treat, United States Marshal, deprived of his liberty without due process of law.

Wherefore your petitioner prays that a writ of *Habeas Corpus* be issued, directed to the said United States Marshal of the Eastern District of Virginia, who has your petitioner in custody, demanding him to bring the body of your petitioner before this Court forthwith; and further that a writ of Certiorari be directed to the said Honorable Edmund Waddill, Jr., Judge as aforesaid, commanding that he return all proceedings against this petitioner to this court forth-
18 with, for such action as may be proper in the premises.

FRANK E. WILCOX.

UNITED STATES OF AMERICA,
Eastern District of Virginia, County of Henrico, ss:

Frank E. Wilcox Being duly sworn, deposes and says that he has read the foregoing petition, and knows the contents thereof, and that the same is in all respects true.

FRANK E. WILCOX.

Sworn and subscribed to before me this 14th day of July, 1906.

JOSEPH P. BRADY,
Clerk U. S. Circuit Court.

W. L. WILLIAMS, *Attorney.*
JOHN J. VERTRESS,
JAMES C. BRADFORD,
Counsel.

19 Ex. A.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

On this 14th day of July, A. D. 1906, at the City of Richmond, in the said District, before the Honorable Edmund Waddill, Jr., Judge of the District Court of the United States of America for the said District, comes Morgan Treat, United States Marshal in and for the said District, and upon his oath complains and says: that he has good cause to believe and does firm- believe that Frank E. Wilcox of Virginia, stands indicted by the grand jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said Frank E. Wilcox on the eighth day of July in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, being during said period one of the sales agents of the Virginia-Carolina Chemical Company a corporation existing under and by the laws of the State of New Jersey did in the said Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said Frank E. Wilcox did unlawfully conspire with divers other persons and corporations to commit an offense against the United States, to-wit, the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States, all as more fully set out in an
20 indictment filed in the said Circuit Court of the United States in and for the Middle District of Tennessee on May 25, 1906, in cause No. 963, entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al,*" a certified copy of which indictment is hereto attached and made a part of this complaint; and complainant therefore charges that the said Frank E. Wilcox did commit the said offenses against the United States in manner and form as set forth in said indictment.

Complainant furthermore avers upon information and belief that in pursuance of an order of said Circuit Court of the United States for the Middle District of Tennessee a bench warrant has been issued from said Court for the arrest of said Frank E. Wilcox and delivered to the Marshal of said Court, who after due search has returned said warrant "not found" in said Middle District of Tennessee; and that said Frank E. Wilcox is now believed to be within the Eastern District of Virginia, of which district he is a resident.

Wherefore this complainant prays that the said Frank E. Wilcox may be arrested and imprisoned and removed or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee, and further dealt with according to law.

MORGAN TREAT, *Marshal.*

Subscribed and sworn to before me by the above named Morgan Treat the day and year first above written.

EDMUND WADDILL, JR.,
U. S. Judge.

21 Ex. B.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

To the Marshal of the Eastern District of Virginia, Greeting:

Whereas complaint in writing on oath, has been made to me charging that Frank E. Wilcox of Virginia, stands indicted by the grand jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said Frank E. Wilcox on the eighth day of July, in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, did in the Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said Frank E. Wilcox did unlawfully conspire with divers other persons and corporations to commit an offense against the United States, to-wit, the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States; and application has been made to me that the said Frank E. Wilcox may be arrested and imprisoned and removed or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee;

Now, therefore, you are hereby commanded to arrest the said Frank E. Wilcox if he be found within your said District, and bring him forthwith before me at my Chambers in Richmond, in order that he may be dealt with according to law.

EDMUND WADDILL, JR.,
District Judge.

Richmond, Va., July 14, 1906.

22 Pursuant to the within writ, I have taken the defendant Frank E. Wilcox into custody and now have him before Hon. Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia.

MORGAN TREAT,
United States Marshal.

July 14th, 1906.

23 EXHIBIT C.

In the Circuit Court of the United States of America for the Middle District of Tennessee, of the April Term, in the Year of Our Lord Nineteen Hundred and Six.

MIDDLE DISTRICT OF TENNESSEE, *sct:*

The grand jurors for the United States of America, inquiring for the Middle District of Tennessee, upon their oath present, that before and on the eighth day of July, in the year of our Lord nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year of our Lord nineteen hundred and five, the following named corporations, respectively organized and existing under and authorized by the laws of the several States and of the foreign country here named in connection with them, and hereafter in this indictment called corporation defendants, to wit, the Virginia-Carolina Chemical Company, of New Jersey, Armour and Company, of Illinois, the Acme Manufacturing Company, of North Carolina, the Alabama Chemical Company, of New Jersey, the Anderson Phosphate & Oil Company, of South Carolina, the Ashepoo Fertilizer Company, of South Carolina, the Blackshear Manufacturing Company, of Georgia, the Etiwan Fertilizer Company, of South Carolina, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, The Furman Farm Improvement Company, of Georgia, the Goulding Fertilizer Company, Limited, of Great Britain and Ireland, The Goulding Fertilizer Company, of Florida, the Gulfport Cotton Oil, Fertilizer & Manufacturing Company, of Georgia, the Home Mixture Guano Company, of Georgia, the Jackson Fertilizer Company, of Mississippi, the Marietta Fertilizer Company, of Georgia, the Meridian Fertilizer Factory, of Mississippi, the National Fertilizer Company, of Tennessee, the New Orleans Acid and Fertilizer Company, of New Jersey, the Old Dominion Guano Company, of
24 Georgia, the Planters Chemical Company, of Alabama, the Read Phosphate Company, of West Virginia, the F. S. Royster Guano Company, of Virginia, the Savannah Guano Company, of Georgia, the Southern States Phosphate and Fertilizer Company, of Georgia, the Standard Chemical & Oil Company, of Alabama, the Standard Guano and Chemical Manufacturing Company, of Louisiana, Swift & Company, of Illinois, the Tennessee Chemical Company, of Tennessee, and the Tennessee Valley Fertilizer Company, of Alabama, and certain firms, to wit, the firm of A. D. Adair and McCarty Brothers and the firm of Wilcox, Ives & Company, did carry on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereafter in this indictment called the States of the conspiracy, as wholesale dealers in complete and alkaline fertilizers and in acid phosphates, nitrates, and potash salts suitable for fertilizers, which then were useful and valuable

articles of merchandise, indispensable for use on the soil of the said States of the conspiracy in order that the staple crops of those States might be raised therefrom; that the following named persons, hereafter in this indictment called individual defendants, to wit, Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, of the said Virginia-Carolina Chemical Company, and J. Rice Smith, agent and manager of the said Virginia-Carolina Chemical Company, and president of the Georgia Chemical Works hereinafter mentioned, Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, Fred G. Brown, president and treasurer of the said Anderson Phosphate & Oil Company, Frank Burbidge, president, and William J. McCormack, treasurer, of the said Etiwan Fertilizer Company, George Braden, president of the said Federal Chemical Company, of Delaware, and also of the said Federal Chemical Company, of Kentucky, Augustus D. Adair and James D. McCarty, officers and agents of the said Furman Farm Improvement Company and members of the said firm of A. D. Adair and McCarty Brothers, William DeC. Kessler, secretary and treasurer of the said Goulding Fertilizer Company, Limited, James G. Tinsley, president of the said Marietta Fertilizer Company and vice-president of the said Tennessee Chemical Company, William D. Rhea, general manager of the said National Fertilizer Company, William L. Peel, president of the said Old Dominion Guano Company, Abram C. Read, vice-president and general manager, and Isaac Mayo Read, agent, of the said Read Phosphate Company, Frank S. Royster, president, and Charles F. Burroughs, vice-president, of the said F. S. Royster Guano Company, A. J. Ives, whose Christian name is to the said grand jurors unknown, secretary and treasurer of the said Savannah Guano Company and a member of the said firm of Wilcox, Ives & Company, T. Porter Fleming, vice-president of the said Southern States Phosphate and Fertilizer Company, and T. Garland Tinsley, president and treasurer of the said Tennessee Chemical Company, in their said several capacities as officers, managers, agents, and attorneys of the said corporation defendants and members of the said firms, and on behalf of those corporations and firms, during the period of time in this indictment first aforesaid, did carry on the business aforesaid; that in so carrying on the said business the said defendants, that is to say, the said corporation and individual defendants, did sell and deliver large quantities of the said merchandise within the limits of the said States of the conspiracy from the respective places of business of the said corporation defendants and the said firms, located at different points within those States, to retail dealers in and consumers of such merchandise, in such States respectively, and did also ship large quanti-es of the same from their respective places of business, located in the said States of the conspiracy and also in the States of Virginia, Illinois, and Kentucky, into and through other of the said States than those in which their said places of business were located; that in so carrying on the said busi-

ness and shipping the said merchandise from one of the said States into and through another or others thereof, the said defendants, during the period aforesaid, were engaged in trade and commerce among the States of this Union within the meaning of the Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in so carrying on the said business, trade and commerce, the said Virginia-Carolina Chemical Company and the said Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, and J. Rice Smith, agent and manager, of the said Virginia-Carolina Chemical Company, did make use of and operate a portion of their said business, trade and commerce through each of certain other corporations, to wit, the American Fertilizer Company, of Virginia, the Birmingham Fertilizer Company, of Alabama, the Coweta Fertilizer Company, of Georgia, the Georgia Chemical Works, of Georgia, the Navassa Guano Company, of North Carolina, of either the whole or a majority of the capital stock of which said corporations respectively the said Virginia-Carolina Chemical Company was the owner;

26 that in so carrying on the said business, trade and commerce, the said Armour and Company and the said Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, did make use of and operate all of their said business, trade and commerce through a certain other corporation called the Tuscarora Fertilizer Company, of New Jersey, and a certain trade name, to wit, the trade name of Armour Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Furman Farm Improvement Company and the said firm of A. D. Adair and McCarty Brothers did make use of and operate a portion of their said business trade, and commerce under the trade name of Chickamauga Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Federal Chemical Company, of Delaware, and the said Federal Chemical Company of Kentucky, did make use of, and operate a portion of their said business, trade and commerce through, the names of Century Phosphate Company, Fox Chemical Company, Branch Globe Fertilizer Company, Branch and Tennessee Phosphate Company; that in so carrying on the said business, trade and commerce, the said National Fertilizer Company did make use of, and operate a portion of its said business, trade and commerce through, the corporate name of American Guano Company and the trade name of Nashville Guano Company; that in so carrying on the said business, trade and commerce, the said Read Phosphate Company did make use of, and operate a portion of its said business, trade and commerce through the corporate name of Empire Guano Company; that in so carrying on the said business, trade and commerce, the said F. S. Royster Guano Company did make use of, and operate a portion of its said business, trade and commerce through the trade name of Atlantic Chemical Company and the corporate name of Columbia Guano Company; that in so carrying on the said business, trade and

commerce, the said Swift and Company did make use of, and operate the whole of its said business, trade and commerce through, the trade name of Swift Fertilizer Works; and that in so carrying on the said business, trade and commerce, the said Tennessee Chemical Company did make use of, and operate a portion of its said business, trade and commerce through, the trade name of Continental Fertilizer Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that of the total volume of such business, trade and commerce then so being carried on by the said defendants and their competitors, the said defendants together had and controlled the principal part, that is to say, ninety per centum thereof; and
27 that because the said corporation defendants and the said firms were in fact separate and distinct from each other, they should have conducted their interstate trade and commerce strictly in competition with each other, during the said period, and then would have so conducted the same but for the unlawful conspiracy in restraint of the said business, trade and commerce in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, at and within the said Middle District of Tennessee, in violation of the provisions of said section one of the said Act of Congress, unlawfully did knowingly engage in a conspiracy in restraint of the said business, trade and commerce, so then being carried on by them in the manner aforesaid, whereby the said business, trade and commerce was restrained in the several ways and by the several means now here set forth and described, that is to say:

Competition as to the prices at which the said merchandise was sold and delivered by the said corporation defendants and the said firms in the said States of the conspiracy, which before the period of time in this indictment first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was prevented and destroyed by the said defendant from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them styled "current, reasonable market prices," for the said merchandise so sold and delivered by the said corporation defendants and the said firms in those States, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so fixed and caused to be fixed; which said uniform and non-competitive prices were prices greatly in excess of the prices which but for the said unlawful conspiracy would at such times have prevailed for the said merchandise in the said business, trade and commerce, and were prices therefore unreasonable, and were a tax on the people of the said States of the said conspiracy amounting to a large sum of money, to wit, four million dollars, annually during the continuance of the same.

For and on account of such quantity of the said merchandise as was sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts allotted and caused

to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and
28 delivered in excess, was, by the corporation defendants and firms so selling and delivering the same, paid into a common fund, held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, compensated, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as sold and delivered less than the amounts so allotted to them respectively, so it was not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy that each of the said corporation defendants and of the said firms also paid into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment to be the absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm, in disposing of its said allotment in carrying on the said business, trade and commerce, on its part faithfully should exercise every reasonable effort and due business diligence to maintain the prices so fixed and caused to be fixed as aforesaid and pay into the said fund the sum accruing to the same on account of its said excess sales, in which case an equal amount was returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also made uniform and non-competitive as between all of the said corporation defendants and the said firms, in the said business, trade and commerce, among the said States of the conspiracy.

As a convenient intermediary and common agent between the said corporation defendants and the said firms, respectively and as a means of securing their co-operation in carrying out the said unlawful conspiracy, the said defendants made use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company, Limited, was also allowed and required to collect, hold, use and distribute the said fund
29 arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that, in pursuance of the said unlawful conspiracy,

and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of September, in the year nineteen hundred and three, during the period of time aforesaid, at and within the City of New York, in the State of New York, unlawfully did knowingly deposit with the Continental Trust Company, of the said City of New York, the sum of twenty-six thousand dollars, in connection with the purchase of by the said trust company on behalf of the said Virginia-Carolina Chemical Company, and in the name of one Montrose Stuart, a clerk in the office of the said trust company, of twenty-six hundred shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Samuel T. Morgan, on the seventh day of October, in the same year nineteen hundred and three, and during the period of time aforesaid, at and within the said city of New York, in the State of New York, unlawfully did deliver to the said William DeC. Kessler, Vice-President of the said Colonial Development Company, Limited, three checks drawn by the said Virginia-Carolina Chemical Company, one upon the National City Bank, of New York City aforesaid, for eighty thousand dollars, another on the Bank of America, of New York City aforesaid, for fifty thousand dollars, and the other on the National Park Bank, of New York City aforesaid, for thirty-five thousand and four hundred and sixty-eight dollars, aggregating one hundred and sixty-five thousand and four hundred and sixty-eight dollars, as and for a payment, by the said Virginia-Carolina Chemical Company, to the said Colonial Development Company, Limited, of twenty cents a ton on its allotment under the said unlawful conspiracy; he the said Samuel T. Morgan, when and where he so as aforesaid delivered the said checks to the said William DeC. Kessler, well knowing the character and purpose of the same, and well knowing that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as acts on their parts respectively of engaging in the same, the said Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, on the seventeenth day of September, in the year nineteen hundred and three, and during the period aforesaid, at the said City of New York, in the said State of New York, unlawfully did meet together to discuss and further the object of the said unlawful conspiracy; they the said Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred G. Brown,

Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, when and where they so as aforesaid met together, each well knowing the character and purpose of the said meeting, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank E. Wilcox, on the first day of November, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did deliver to one W. W. Perkins, Secretary of the said American Fertilizing Company, a certain document, too voluminous to be here set forth, stating certain prices and terms of sale, fixed in pursuance of the said unlawful conspiracy, for the said fetilizer merchandise, in the States of North Carolina, South Carolina, Georgia, Florida, Alabama and Tennessee, for the spring season of the year nineteen hundred and four; he the said Frank E. Wilcox at the time and place when and where he so as aforesaid delivered the said document to the said W. W. Perkins, well knowing the character of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, and during the period of time aforesaid, at the town of Decherd, in the said Middle District of Tennessee, by and through one
31 F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, and during the period aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, and during the period of time aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at the City of Nashville, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, a certain notice of shipment, partly written and partly printed, in the words and figures following, that is to say:

"The Armour Fertilizer Works
Owned and operated by
Armour & Company.
Prudential Building,
Atlanta, Ga.

Duplicate.
To be Mailed with Bill of
Lading to Customer.

No. 612
March 10", 1905.

32 We have this day shipped from Nashville, Tenn. storage
To Bramlitt Hdw Co.
Corinth, Miss.
Charge to S. D. Bramlitt. Address same.

No. Bags.	Weight of bags.	Brand.	Tons.
400	100	King Cotton 8.2.2	20

Order No. 4613.
Bill of lading herewith. Invoice will be mailed from Chicago.
Above quantities shipped 3 10 1905. Freight Terms.....
Car No. 13619. Via L. & N.
Charges prepaid $48.00.
THE ARMOUR FERTILIZER WORKS,
Per ALEX. LESLIE."

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Austin B. Carpenter, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Assistant Secretary of the said Colonial Development Company, unlawfully did sign his name, to wit, "A. B. Carpenter, Asst. Secy." on the face of a certain stock certificate, to wit, certificate No 28, showing the ownership by one Thomas M. Green of fifty-one shares of the capital stock of the said Colonial Development Company; he the said Austin B. Carpenter, at the time and
33 place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his said act to be done in pursuance and to effect the object of the said conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles H. MacDowell, on the twelfth day of January, in the year nineteen hundred and five, and during the period of time aforesaid, at and within the city of Chicago, in the State of Illinois, unlawfully did sign his name, to-wit, "C. H. MacDowell," under the name of the Armour Fertilizer Works, and after the word "by" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Armour and Company, under the trade name of "Armour Fertilizer Works," offered to furnish and deliver at Corinth, in the State of Mississippi to one S. D. Bramlitt, twenty tons of the fertilizer merchandise aforesaid; he the said Charles H. MacDowell, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of gaging in the same, the said Alabama Chemical Company, on the the first day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the city of Wilmington, in the State of North Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of six hundred and twenty

dollars for sixty-two shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Alabama Chemical Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Montgomery, in the State of Alabama, unlawfully did knowingly deliver its certain check drawn upon the Merchants and Planters-Farley National Bank, Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of William DeC. Kessler, as payment for forty-two shares of the capital stock of the said Colonial Development Company, Limited;

34 And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Anderson Phosphate and Oil Company, on the twenty-ninth day of August, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Anderson, in the State of South Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of five hundred and eighty dollars for fifty-eight shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly buy from the Carolina Savings Bank, Charleston, South Carolina, a draft upon the Citizens National Bank, of New York City, for the payment of the sum of seven thousand nine hundred and forty-nine dollars and forty-three cents to the order of one Frank E. Taylor, Vice-President and General Manager of the said Ashepoo Fertilizer Company;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and *and* during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly cause the said Frank E. Taylor to endorse the check last above mentioned payable to the order of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Blackshear Manufacturing Company, on the seventeenth day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Blackshear, in the State of Georgia, unlawfully did knowingly deliver to the Atlantic Coast Line Railroad Company six tons of the fertilizer merchandise aforesaid, consigned and to be shipped

to the firm of E. J. Blume & Company, at Live Oak, in the State of Florida;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Etiwan Fertilizer Company, on the fourteenth day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Cairo, in the State of Georgia, by and through one P. H. Seabrook, its agent, unlawfully did knowingly offer and agree to furnish and deliver to the firm of Wight Brothers, of Cairo aforesaid, thirty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank Burbidge, on the first day of July, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Charleston, in the State of South Carolina, having then and there in his hands a certain check, dated the thirtieth day of June, in the same year nineteen hundred and four, drawn by the said Alabama Chemical Company upon the Continental National Bank of Chicago, for the payment of eleven hundred and forty-two dollars and ninety-seven cents to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Pay to order of People's National Bank, Colonial Development Co., Ltd., F. Burbidge, Pres."; he the said Frank Burbidge then and there, to wit, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William J. McCormack, on the ninth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, having then and there in his hands a certain check dated the fifth day of September, in the same year, drawn by the said New Orleans Acid & Fertilizer Company, upon the Louisiana National Bank of New Orleans, for the payment of seven hundred and fifty dollars to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Colonial Developm't Co., Frank Burbidge, Sec. & Treas., per Wm. J. McCormack"; he the said William J. McCormack, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of en-

gaging in the same, the said Federal Chemical Company, of
36 Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the said State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, and during the period of time aforesaid, at Springfield afore-
37 said, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff & Williams, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Goulding Fertilizer Company, Limited, on the twenty-fifth day of November, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the

town of Cullman, in the State of Alabama, by and through one W. E. Craig, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one John Sutterer, at Cullman aforesaid, three hundred and seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the sixth day of September, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Pensacola, in the State of Florida, having then and there in his hands a certain check, dated the fifth day of September, in the same year nineteen hundred and three, drawn by the said Alabama Chemical Company upon Merchandise Merchants and Planters-Farley National Bank of Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of W. DeC. Kessler, unlawfully did sign his name, to wit, "W. DeC. Kessler," upon the back of the said check next below the written words "Pay to the order of Colonial Development Co."; he the said William DeC. Kessler then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the back of the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the said fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Vice-President of the said Colonial Development Company, unlawfully did sign his name, to wit, "W. DeC. Kessler, V. P." on the face of the said stock certificate in the name of Thomas M. Green; he the said William DeC. Kessler, at the time and place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing
his act to be done in pursuance and to effect the object of
38 the said unlawful conspiracy, and that it was an act on his
part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Gulfport Cotton Oil Fertilizer and Manufacturing Company, on the twenty-seventh day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-four hundred dollars for and in respect of twelve thousand tons of the fertilizer merchandise aforesaid, allotted to the said Gulfport Cotton Oil, Fertilizer and Manufacturing Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Home Mixture Guano Company, on a day in the year nineteen hundred and three to the said grand jurors

unknown, and during the period of time aforesaid, at and within the City of Columbus, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Jackson Fertilizer Company, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Jackson, in the State of Mississippi, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Marietta Fertilizer Company, on the twenty-first day of July, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by and through one L. W. Reeves, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one James A. Boyd, at Jonesboro aforesaid, seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said James G. Tinsley, on the
39 third day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Nashville, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley; he the said James G. Tinsley, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Meridian Fertilizer Factory, on the seventh day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Cullman, in the State of Alabama, by its agent E. L. Robbins, unlawfully did knowingly offer to furnish to C. A. Steifelmeyer one hundred and fifty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said National Fertilizer Company, on the

second day of March, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eight*ly* dollars to the order of F. Burbidge; he the said William D. Rhea, then and there, to wit, at the time and place when and where he so directed and required the said E. W. Connell to sign his name as aforesaid to the said check, well knowing the nature and contents of the said check, and that his said direction and requirement were in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid; he the said William D. Rhea then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the said document, well knowing the character of the same, and well knowing his said act to be one done in pursuance of and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said New Orleans Acid & Fertilizer Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did

knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars for seventy-five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Old Dominion Guano Company, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-six hundred and twenty dollars, for and
41 in respect of thirteen thousand one hundred tons of the fertilizer merchandise aforesaid, allotted to the said Old Dominion Guano Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William L. Peel, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did sign his name, to wit, "W. L. Peel, Prest.," to a certain check, to wit, a check drawn by the Maddox-Rucker Banking Company upon the National Park Bank, New York, for the payment of twenty-six hundred and twenty dollars to the order of the said Colonial Development Company, Limited; he the said William L. Peel, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the sane, the said Planters Chemical Company, on the thirtieth day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Talladega, in the State of Alabama, unlawfully did knowingly pay the said Colonial Development Company, Limited, the sum of fifty dollars for five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the sane, the said Read Phosphate Company, on the fifth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Hartselle, in the State of Alabana, unlawfully did knowingly offer to sell and deliver to one S. E. Stewart, at that place, forty to fifty tons of the fertilizer merchandse aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the sane, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and

three, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too
42 voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid; he the said Abram C. Read, then and there, to wit, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved, Nashville Tenn. Dec. 6 1904," and above the word "Manager," upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof, offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid; he the said Abram C. Read then and there, to wit, at the time and place when and where he so as aforesaid signed his name to the last mentioned document, well knowing the character and contents of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said F. S. Royster Guano Company, on the thirtieth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine thousand three hundred and fourteen dollars and seventy-four cents, on account of such merchandise sold and delivered by the said F. S. Royster Guano Company in excess of its allotment under the aforesaid unlawful conspiracy;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles F. Burroughs, on the twenty-fifth day of March, in the year nineteen hundred and four,
43 and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did sign

his name, to wit, "C. F. Burroughs," under the word "countersigned" and above the words "Vice-President" upon the face of a certain document, partly written and partly printed, too voluminous to be here set forth in full, wherein and whereby the said F. S. Royster Guano Company and he the said Charles F. Burroughs, as Vice-President thereof, offered to sell to one J. W. Carter, and to deliver to him at Maxton, in the State of North Carolina, ten tons of the fertilizer merchandise aforesaid; he the said Charles F. Burroughs, at the time and place when and where he so as aforesaid signed his name to the said document, well knowing the character and contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Savannah Guano Company, on the second day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did knowingly pay to the said Frank Burbidge the sum of nine hundred and forty dollars for ninety-four shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said A. J. Ives, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did sign his name, to wit, "A. J. Ives, Secty. & Treas." to a certain check, to wit, a check drawn by the Savannah Guano Company upon the Merchants National Bank, Savannah, Georgia, for the payment of three thousand one hundred and forty dollars to the order of New York Exchange; he the said A. J. Ives, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Southern States Phosphate and Fertilizer Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of the time afore-
44 said, at and within the City of Augusta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine hundred and sixty dollars for ninety-six shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Chemical and Oil Company, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the

town of Troy, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand dollars for and in respect of one-half of forty thousand tons of the fertilizer merchandise aforesaid allotted to the said Standard Chemical and Oil Company, as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Guano and Chemical Manufacturing Company, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand seven hundred and seventy-four dollars and seventy-seven cents as a partial payment for and in respect of the fertilizer merchandise aforesaid, allotted to the said Standard Guano and Chemical Manufacturing Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Swift & Company, on the first day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by its agent, J. Z. Elliott, unlawfully did knowingly offer to furnish to one W. P. Diehl thirty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

And that, further in pursuance of the said unlawful con-
45 spiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes & Bro., at Oxford, Alabama, a certain letter of the tenor following, to wit:

T. G. Tinsley, Pres't & Treas. Allen Hardison, Sec'y.

Tennessee Chemical Company, Manufacturers and Importers of Ox Fertilizers.

NASHVILLE, TENN., *May* 17–'05.

Messrs. D. P. Haynes & Bro., Oxford, Ala.

DEAR SIRS: I am in receipt of your favor of the 16th and beg to state we could not allow any discount further than the 5 % for cash

settlement. We will be glad to have you settle in cash on this basis if you desire to do so, but are sorry to state we are not in a position to offer you any further discount.

Yours truly, T. G. TINSLEY, *President;*

he the said T. Garland Tinsley then and there, to wit, at the time and place when and where he so as aforesaid caused the said letter to be written and sent as aforesaid, well knowing that the same was so written and sent in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part in engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Company, James G. Tinsley. By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee
46 Chemical Company upon the Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley; he the said T. Garland Tinsley, at the same time and place when and where he so as aforesaid wrote the said endorsement on the back of the said check, well knowing the contents of the same, and that his said act was done in pursuance of and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Valley Fertilizer Company, on the second day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Florence, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars, as a partial payment for and in respect of fertilizer merchandise, aforesaid, allotted to the said Tennessee Valley Fertilizer Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on their parts respectively, of engaging in the same, the said Frank Burbidge, Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson, during the period of time aforesaid, at the City of New York, in the State of New York, the City of Washington, in the District of Columbia, Old Point Comfort and Hot Springs, in the State of Virginia, St. Augustine, in the State of Florida, and French Lick Springs, in the State of Indiana, unlawfully did as officers, directors and attorney of the said Colonial Development Company, Limited,

meet together for the purpose of discussing and attending to the affairs of the said Colonial Development Company, Limited; they the said Frank Burbidge, Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson when and where they so met together aforesaid, well knowing the purpose of such meetings, and well knowing their acts in the premises to be acts in pursuance and to effect the object of the said unlawful conspiracy, and that the same were done as acts on their parts respectively of engaging in the said unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, during the period of time aforesaid, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form aforesaid, unlawfully did engage in a conspiracy in
47 restraint of trade and commerce among the several States;

Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

Second Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the first count described, and were so engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord, nineteen hundred and three at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the grand jurors unknown, and engage in a conspiracy, among themselves and with such other unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid; which said unlawful conspiracy in this count mentioned then and there was a conspiracy for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described; that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the

said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing and causing to be fixed, uniform and non-competitive prices, by them to be styled "current, reasonable market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such times prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

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For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum ther-of during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be the absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its excess

sales, in which case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their cooperation in carrying out the said unlawful conspiracy, the said defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, and as being acts on the part of the said corporation and individual defendants respectively of engaging in that conspiracy, are now here in this count charged to be acts by the same corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned, and to have been acts on the part of the said corporation and individual defendants respectively of engaging in the last-named unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of trade and commerce among the several States; against the peace and dignity of the said United

States, and contrary to the form of the statute of the same in such case made and provided.

THIRD COUNT.

And the grand jurors, aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the said first count described, and so were engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the said United States, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the said United States, to wit, the offense of engaging in a combination, among themselves and with such other unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid, which said unlawful conspiracy in this count mentioned then and there was a conspiracy to engage in a combination for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described, that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and com-
51 merce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them to be styled "current, reasonable market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be

prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such times prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful combination and ninety per centum thereof during the second year; it being a further element of the said unlawful combination in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on the said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the
52 same on account of its excess sales, in which case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their cooperation in carrying out the said unlawful combination, the said defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and

the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful combination; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, are now here in this count charged to be acts by the said corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned.

And so the grand jurors aforesaid, upon their oatn aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy to commit an offense against the said United States: Against
53 the peace and dignity of the said United States; Against the peace and dignity of the said United States, and contrary to the form of the statute in such case made and provided.

Fourth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names

and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State, but by way of and partly through another State, and were severally engaged both in local com-
54 merce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the aforesaid business and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section one of the said Act of Congress, approved July 2, 1890, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, The Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company of Delaware, the Federal Chemical

Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count,
55 to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly engage in a conspiracy in restraint of commerce among the several States, to wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, whereby the said commerce was restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise which were maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the period of such unlawful conspiracy, and greatly in excess of those prices which would have otherwise prevailed in the said States during the period of such unlawful conspiracy, and were therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby earnest money was given to secure the maintenance of such prices and compensation was made to those losing volume of business by reason of maintaining such prices, that is to say:

There was from time to time allotted to each of said corporation defendants and firms an amount of tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms paid into a common fund the sum

of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sums becoming due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which faithfully maintained such uniform and non-competitive prices and failed to make sales
56 and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but sold and delivered through itself and its subsidiary companies a minimum amount thereof required as a guarantee of good faith, received from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid fell short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies made such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, as a penalty upon such excess sales, paid into such common fund like amounts per ton on the said respective kinds of fertilizers, divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means whereby said unlawful conspiracy was effected, a corporation of Ontario, Canada, whose stock was apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was the common fund aforesaid into which was paid the earnest money and penalties on excess sales aforesaid, and from which was paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which the same was operated and directed.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that within the period aforesaid of said unlawful conspiracy in this count of this indictment mentioned, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and did do and perform such acts as acts on their respective part of engaging in the said unlawful conspiracy in this count of the indictment mentioned, and that each of such defendants at the time and place when and where such defendants did and performed the acts hereinafter so set forth in connection with such defendant respectively, then

and there well knew the character of such act and that such
57 act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, and as an act on the part of such defendant in engaging in the same, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year, nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the
58 tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee,
59 unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the

County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit,
60 "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Ten-

nessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec. 6 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abraham C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P.
61 Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said corporation and individual defendants, during the period of time aforesaid, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

Fifth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the

first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and
62 through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the several States of the conspiracy and the said States of Virginia, Illinois and Kentucy, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commence against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, approved July 2, 1890, the said corporation defendants named in the said first count, to wit, the Virginia-Caro-
63 lina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Mariette Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, and engage in a conspiracy among themselves and with such other unknown corporations and persons, in restraint of commerce among the several States, to-wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, by which unlawful conspiracy said commerce was to be restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the

various points of delivery in the said States of the conspiracy,
64 which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy, and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices, that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to make sales and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose
65 treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary and

common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful conspiracy was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that such act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

66 In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one

Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said consiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company,
67 on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Ten-

nessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle
68 District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his, the said E. W. Connell's name as such Treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fer-

tilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn., Dec. 6 1904"
69 and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he, the said Abram C. Read as Manager thereof offer-d to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee

Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

70 SIXTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were

severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress approved July 2, 1890, and entitled "An Act to protect
71 trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and in the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section 5440 of the Revised Statutes of the United States, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William
72 J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Wil-

liam D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the United States, to wit, to engage in a combination in restraint of commerce among the several States, namely, a combination in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, and did then and there so conspire to commit the aforesaid offense by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy, and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices; that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to
13 make sales and deliveries of such merchandise through itself and its subsidiary — amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment,

as aforesaid; and on the other hand, each of said corporation defendants and firms which, through itself and its subsidiary companies, should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful combination was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid, the corporation defendants and individual defendants, hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that such act was done in pur-
74 suance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and

four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at West
75 Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid,

consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchan-
76 dise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Arndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day

and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D.
77 Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec. 6 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes

and Bro.," at Oxford, Alabama, that certain letter of the date
78 set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley, By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did conspire to commit an offense against the United States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

ABRAM M. TILLMAN,
United States Attorney.

(Endorsed as follows:) No. 963. United States Circuit Court, Middle District of Tennessee. *The United States vs. Virginia-Carolina Chemical Company et als.*

Indictment for violating Act of Congress approved July 2, 1890, and entitled "An Act to Protect Trade and Commerce against unlawful restraints and monopolies," and Section 5440 R. S. U. S.

A True Bill. Robert Q. Stewart, Foreman of the Grand Jury.

Names of Witnesses Sworn and Examined Before the Grand Jury.

J. C. Adams, Henry E. Ahern, Lee Ashcraft, Eugene Atkinson, N. E. Barker, W. F. Barrett, James C. Beck, J. M. Berry, W. W. Bird, L. W. Botts, Clarence Braden, S. D. Bramlitt, A. P. Brantley,
B. D. Brantley, Dewitt Brown, H. C. Brown, Arthur Bussey,
79 Hezekiah Bussey, E. J. Blume, James A. Boyd, William F. Burns, Oscar Bright, J. W. Carter, B. G. Clark, C. W. Comes, E. W. Connell, Charles Earle Currie, R. L. Davis, Joseph Denee, W. P. Diehl, A. M. Dobbs, John V. Dobson, C. H. Drayton, W. L. Dumas, J. B. Duncan, S. Eastland, T. B. Edwards, Culpepper Exum, H. C. Fischer, J. B. Fiser, Albert French, C. A. Gambrill, A. H. George, John E. Gibbs, William Gilchrist, James M. Goldsmith, A. A. Green, E. P. Grice, W. A. Hansel, G. A. Harrington, H. J. Harby, Allen Hardison, L. C. Hayne, J. L. Haynes, D. P. Haynes, R. W. Henderson, P. W. Hendricks, E. R. Hodgson, junior, E. R. Hodgson, senior, J. L. Horn, W. E. Hudson, T. J. Hunt, R. H. John-

ston, T. V. Kessler, E. M. Kirk, Henry Kirn, H. L. Law, Alexander Leslie, J. A. Lindsey, W. Hampton Logan, Harry Luck, John A. Lewis, W. F. McKenzie, Robert F. Maddox, H. W. Malloy, E. R. Manning, H. L. Milligan, J. Allen Moore, M. B. Neece, W. J. Oliver, E. Thomas Orgain, D. B. Osborne, Every M. Paget, W. W. Perkins, Dr. J. D. Plunkett, F. B. Pope, William Price, Charles Rainey, Frederick Rayfield, Isaac W. Read, W. A. Reynolds, I. T. Rhea, W. E. Richards, H. A. Rogers, V. N. Roadstrum, W. G. Sadler, G. W. Sanders, E. M. Sentelle, W. McR. Smith, R. G. Sparrow, J. F. Stackley, C. A. Steifelmeyer, S. E. Stewart, W. B. Stratford, John Sutterer, E. R. Taber, Frank E. Taylor, W. B. Taylor, W. D. Tharin, J. R. Timmerman, J. W. Todd, S. W. Travers, George H. Tucker, E. Van Winkle, J. T. Welch, O. C. Wiley, C. H. Willcox, T. B. Williams, Benjamin L. Willingham, W. S. Wight, E. G. Woodling.

Filed 11:30 A. M., May 25, 1906. H. M. Doak, Clerk, by E. L. Doak, Deputy Clerk. Abram M. Tillman, U. S. Atty.

I, H. M. Doak, Clerk of the Circuit Court of the United States in and for the Middle District of Tennessee, hereby certify that the foregoing is a true, perfect, and complete copy of an indictment filed as thereupon endorsed, etc. In witness whereof I have hereunto signed my name and affixed the seal of said court, at my office, this the 26th day of May, 1906.

[SEAL OF COURT.] H. M. DOAK, *Clerk.*

80 *Order Awarding Writs of Habeas Corpus and Certiorari.*

Filed July 14th, 1906.

In the Matter of the Petition of FRANK E. WILCOX for Writs of *Habeas Corpus* and Certiorari.

FRANK E. WILCOX, Petitioner,

versus

MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

Let the writ of *habeas corpus*, in due form of law, as prayed for in the within petition be issued directed to Morgan Treat, United States Marshal for the Eastern District of Virginia, commanding him forthwith to make return of said writ and to produce the body of said petitioner, Frank E. Wilcox, before this Court, to be dealt with according to law; and that the writ of certiorari as prayed for in said petition be issued and made returnable forthwith.

Richmond, Va., July 14th, 1906.

NATHAN GOFF,
Presiding Circuit Judge, April Term, 1906.

Writ of Habeas Corpus.

81 UNITED STATES OF AMERICA, *Eastern District of Virginia*, ss:

To Morgan Treat, United States Marshal for the Eastern District of Virginia, or any of his deputies:

We command you that the body of Frank E. Wilcox in your custody detained, as it is said, together with the day and cause of his caption and detention, you safely have before our Circuit Court of the United States, within and for the District aforesaid, forthwith, to do and receive all and singular those things which the said Circuit Court of the United States, within and for the District aforesaid, shall then and there consider of him in this behalf; and have you then and there this writ.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond, this 14th day of July, in the year of our Lord one thousand nine hundred and six, and of our Independence the 131st year.

[Seal United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Cerk of the Circuit Court of the United States for the Eastern District of Virginia.

Marshal's Return.

To the Circuit Court of the United States for the Eastern District of Virginia:

Morgan Treat, United States Marshal for the said Eastern District of Virginia, to whom the annexed writ is directed, has now before the court the body of Frank E. Wilcox therein named, as thereby commanded. And I certify that the cause of the detention of the said Frank E. Wilcox is a warrant directed to me and issued by the Honorable Edmund Waddill, Jr., Judge, of the said Eastern
82 District of Virginia, on July 14, 1906, under the provisions of section 1014 of the Revised Statutes of the United States, commanding the imprisonment and removal of the said Frank E. Wilcox to the Middle District of Tennessee for trial in the Circuit Court of the United States for said last mentioned district upon a certain indictment found in said last mentioned court against him, the said Frank E. Wilcox and others, a copy of which warrant of removal is set out in the petition of the said Frank E. Wilcox herein; and that a full, true and correct statement of all the proceedings before the said Judge upon the application for the arrest and commitment of the said Frank E. Wilcox and his removal to said Middle District of Tennessee for trial is contained and set forth in the statement or order of said Judge, a copy of which is set forth in section 7 of the said Frank E. Wilcox's petition and in the documents made a part thereof and therein referred to.

Dated this 14th day of July, A. D. 1906.

MORGAN TREAT,
U. S. Marshal for the Eastern District of Virginia.

Writ of Certiorari.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

The President of the United States of America to the Judge of the District Court of the United States for the Eastern District of Virginia:

83 We being informed that there is now pending before you a suit in which the United States of America is plaintiff and Frank E. Wilcox is defendant; and we being willing, for certain reasons, that the said case and the record and proceedings therein should be certified by the Judge of the District Court of the United States for the Eastern District of Virginia and removed into the Circuit Court of the United States for the Eastern District of Virginia, sitting at Richmond, Virginia;

We do hereby command you forthwith that you send forthwith to the said Circuit Court of the United States for the Eastern District of Virginia, as aforesaid, the record and proceedings in said case, so that the said Circuit Court of the United States for the Eastern District of Virginia may act thereon as of right and according to law ought to be done.

Witness, The Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond, this 14th day of July, in the year of our Lord one thousand nine hundred and six, and of our Independence the 131st year.

[Seal United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Return of United States District Judge.

The Clerk of the United States District Court is hereby directed to deliver to the Judges of the United States Circuit Court within and for the Eastern District of Virginia the record and proceedings mentioned in the within writ.

Richmond, Va., July 14", 1906.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

84 *Transcript of Proceedings Before Honorable Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia.*

The following proceedings were had before Honorable Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia, at Richmond, Virginia, on the 14th day of July, 1906.

THE UNITED STATES
versus
FRANK E. WILCOX.

Writ of Certiorari.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

The President of the United States of America to the Judge of the District Court of the United States for the Eastern District of Virginia:

We being informed that there is now pending before you a suit in which the United States of America is plaintiff and Frank E. Wilcox is defendant; and we being willing, for certain rea-
85 sons, that the said case and the record and proceedings therein should be certified by the Judge of the District Court of the United States for the Eastern District of Virginia and removed into the Circuit Court of the United States for the Eastern District of Virginia, sitting at Richmond, Virginia.

We do hereby command you forthwith that you send forthwith to the said Circuit Court of the United States for the Eastern District of Virginia, as aforesaid, the record and proceedings in said case, so that the said Circuit Court of the United States for the Eastern District of Virginia may act thereon as of right and according to law ought to be done.

Witness, The Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond, this 14th day of July, in the year of our Lord one thousand nine hundred and six, and of our Independence the 131st year.

[Seal of United States Circuit Court.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Return of United States District Judge.

The Clerk of the United States District Court is hereby directed to deliver to the Judges of the United States Circuit Court within and for the Eastern District of Virginia the record and proceedings mentioned in the within writ.

Richmond, Va., July 14th, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge.

86 *Complaint.*

Filed July 14th, 1906.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

On this 14th day of July, A. D. 1906, at the City of Richmond, in the said District, before the Hon. Edmund Waddill, Jr., Judge of the District Court of the United States of America for the said

District, comes Morgan Treat, United States Marshal in and for the said District, and upon his oath complains and says: that he has good cause to believe and does firmly believe that Frank E. Wilcox, of Norfolk, Virginia, stands indicted by the Grand Jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said Frank E. Wilcox on the eighth day of July in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, being during said period manager and agent of the Virginia-Carolina Chemical Company a corporation existing under and by the laws of the State of New Jersey, did in the said Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said Frank E. Wilcox did unlawfully conspire with divers other persons and
87 corporations to commit an offense against the United States, to-wit, the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States, all as more fully set out in an indictment filed in the said Circuit Court of the United States in and for the Middle District of Tennessee on May 25, 1906, in cause No. 963, entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," a certified copy of which indictment is hereto attached and made a part of this complaint; and complainant therefore charges that the said Frank E. Wilcox did commit the said offense against the United States in manner and form as set forth in said indictment.

Complainant furthermore avers upon information and belief that in pursuance of an order of said Circuit Court of the United States for the Middle District of Tennessee a bench warrant has been issued from said Court for the arrest of said Frank E. Wilcox and delivered to the Marshal of said Court, who after due search has returned said warrant "not found" in said Middle District of Tennessee; and that said Frank E. Wilcox is now believed to be within the Eastern District of Virginia, of which District he is a resident.

Wherefore this complainant prays that the said Frank E. Wilcox may be arrested and imprisoned and removed or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee, and further dealt with according to law.

MORGAN TREAT, *Marshal.*

Subscribed and sworn to before me by the above named Morgan Treat the day and year first above written.

EDMUND WADDILL, JR.,
U. S. District Judge.

88 *Certified Copy of Indictment.*

In the Circuit Court of the United States of America for the Middle District of Tennessee, of the April Term, in the Year of Our Lord Nineteen Hundred and Six.

MIDDLE DISTRICT OF TENNESSEE, *sct:*

The grand jurors for the United States of America, inquiring for the Middle District of Tennessee, upon their oath present, that before and on the eighth day of July, in the year of our Lord nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year of our Lord nineteen hundred and five, the following named corporations, respectively organized and existing under and authorized by the laws of the several States and of the foreign country here named in connection with them, and hereafter in this indictment called corporation defendants, to wit, the Virginia-Carolina Chemical Company, of New Jersey, Armour and Company, of Illinois, the Acme Manufacturing Company, of North Carolina, the Alabama Chemical Company, of New Jersey, the Anderson Phosphate & Oil Company, of South Carolina, the Ashepoo Fertilizer Company, of South Carolina, the Blackshear Manufacturing Company, of Georgia, the Etiwan Fertilizer Company, of South Carolina, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, The Furman Farm Improvement Company, of Georgia, the Goulding Fertilizer Company, Limited, of Great Britain and Ireland, The Goulding Fertilizer Company, of Florida, the Gulfport Cotton Oil, Fertilizer & Manufacturing Company, of Georgia, the Home Mixture Guano Company, of Georgia, the Jackson Fertilizer Company, of Mississippi, the Marietta Fertilizer Company, of Georgia, the Meridian Fertilizer Factory, of Mississippi, the National Fertilizer Company, of Tennessee, the New Orleans Acid and Fertilizer Company, of New Jersey, the Old Dominion Guano Company, of Georgia, the Planters Chemical Company, of Alabama, the Read Phosphate Com-
89 pany, of West Virginia, the F. S. Royster Guano Company, of Virginia, the Savannah Guano Company, of Georgia, the Southern States Phosphate and Fertilizer Company, of Georgia, the Standard Chemical & Oil Company, of Alabama, the Standard Guano and Chemical Manufacturing Company, of Louisiana, Swift & Company, of Illinois, the Tennessee Chemical Company, of Tennessee, and the Tennessee Valley Fertilizer Company, of Alabama, and certain firms, to wit, the firm of A. D. Adair and McCarty Brothers and the firm of Wilcox, Ives & Company, did carry on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereafter in this indictment called the States of the conspiracy, as wholesale dealers in complete and alkaline fertilizers and in acid phosphates, nitrates, and potash salts suitable for fertilizers, which then were useful and valuable articles of merchandise, indispensable for use on the soil of the said States of the conspiracy in order that the staple

crops of those States might be raised therefrom; that the following named persons, hereafter in this indictment called individual defendants, to wit, Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, of the said Virginia-Carolina Chemical Company, and J. Rice Smith, agent and manager of the said Virginia-Carolina Chemical Company, and president of the Georgia Chemical Works hereinafter mentioned, Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, Fred G. Brown, president and treasurer of the said Anderson Phosphate & Oil Company, Frank Burbidge, president, and William J. McCormack, treasurer of the said Etiwan Fertilizer Company, George Braden, president of the said Federal Chemical Company, of Delaware, and also of the said Federal Chemical Company, of Kentucky, Augustus D. Adair and James D. McCarty, officers and agents of the said Furman Farm Improvement Company and members of the said firm of A. D. Adair and McCarty Brothers, William DeC. Kessler, secretary and treasurer of the said Goulding Fertilizer Company, Limited, James G. Tinsley, president of the said Marietta Fertilizer Company and vice-president of the said Tennessee Chemical Company, William D. Rhea, general manager of the said National Fertilizer Company, William L. Peel, president of the said Old Dominion Guano Company, Abram C. Read, vice-president and general manager, and Isaac Mayo Read, agent, of the said Read Phosphate Company, Frank S. Royster, president, and Charles F. Burroughs, vice-
90 president, of the said F. S. Royster Guano Company, A. J. Ives, whose Christian name is to the said grand jurors unknown, secretary and treasurer of the said Savannah Guano Company and a member of the said firm of Wilcox, Ives & Company, T. Porter Fleming, vice-president of the said Southern States Phosphate and Fertilizer Company, and T. Garland Tinsley, president and treasurer of the said Tennessee Chemical Company, in their said several capacities as officers, managers, agents, and attorneys of the said corporation defendants and members of the said firms, and on behalf of those corporations and firms, during the period of time in this indictment first aforesaid, did carry on the business aforesaid; that in so carrying on the said business the said defendants, that is to say, the said corporation and individual defendants, did sell and deliver large quantities of the said merchandise within the limits of the said States of the conspiracy from the respective places of business of the said corporation defendants and the said firms, located at different points within those States, to retail dealers in and consumers of such merchandise, in such States respectively, and did also ship large quan-tities of the same from their respective places of business, located in the said States of the conspiracy and also in the States of Virginia, Illinois, and Kentucky, into and through other of the said States than those in which their said places of business were located; that in so carrying on the said business and shipping the said merchandise from one of the said States into and through another or others thereof, the said defendants, during the period

aforesaid, were engaged in trade and commerce among the States of this Union within the meaning of the Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in so carrying on the said business, trade and commerce, the said Virginia-Carolina Chemical Company and the said Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, and J. Rice Smith, agent and manager, of the said Virginia-Carolina Chemical Company, did make use of and operate a portion of their said business, trade and commerce through each of certain other corporations, to wit, the American Fertilizing Company, of Virginia, the Birmingham Fertilizer Company, of Alabama, the Coweta Fertilizer Company of Georgia, the Georgia Chemical Works, of Georgia, the Navassa Guano Company, of North Carolina, of either the whole or a majority of the capital stock of which said corporations respect-
91 ively the said Virginia-Carolina Chemical Company was the owner; that in so carrying on the said business, trade and commerce, the said Armour and Company and the said Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, did make use of and operate all of their said business, trade and commerce through a certain other corporation called the Tuscarora Fertilizer Company, of New Jersey, and a certain trade name, to wit, the trade name of Armour Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Furman Farm Improvement Company and the said firm of A. D. Adair and McCarty Brothers did make use of and operate a portion of their said business trade, and commerce under the trade name of Chickamauga Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Federal Chemical Company, of Delaware, and the said Federal Chemical Company of Kentucky, did make use of, and operate a portion of their said business, trade and commerce through, the names of Century Phosphate Company, Fox Chemical Company, Branch, Globe Fertilizer Company, Branch, and Tennessee Phosphate Company; that in so carrying on the said business, trade and commerce, the said National Fertilizer Company did make use of, and operate a portion of its said business, trade and commerce through, the corporate name of American Guano Company and the trade name of Nashville Guano Company; that in so carrying on the said business, trade and commerce, the said Read Phosphate Company did make use of, and operate a portion of its said business, trade and commerce through the corporate name of Empire Guano Company; that in so carrying on the said business, trade and commerce, the said F. S. Royster Guano Company did make use of, and operate a portion of its said business, trade and commerce through the trade name of Atlantic Chemical Company and the corporate name of Columbia Guano Company; that in so carrying on the said business, trade and commerce, the said Swift and Company did make

use of, and operate the whole of its said business, trade and commerce through, the trade name of Swift Fertilizer Works; and that in so carrying on the said business, trade and commerce, the said Tennessee Chemical Company did make use of, and operate a portion of its said business, trade and commerce through, the trade name of Continental Fertilizer Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that of the total volume of such business, trade and commerce then so being carried on by the said defendants and their competitors, the said defendants together had and controlled
92 the principal part, that is to say, ninety per centum thereof; and that because the said corporation defendants and the said firms were in fact separate and distinct from each other, they should have conducted their interstate trade and commerce strictly in competition with each other, during the said period, and then would have so conducted the same but for the unlawful conspiracy in restraint of the said business, trade and commerce in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, at and within the said Middle District of Tennessee, in violation of the provisions of said section one of the said Act of Congress, unlawfully did knowingly engage in a conspiracy in restraint of the said business, trade and commerce, so then being carried on by them in the manner aforesaid, whereby the said business, trade and commerce was restrained in the several ways and by the several means now here set forth and described, that is to say:

Competition as to the prices at which the said merchandise was sold and delivered by the said corporation defendants and the said firms in the said States of the conspiracy, which before the period of time in this indictment first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was prevented and destroyed by the said defendant from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them styled "current, reasonable market prices," for the said merchandise so sold and delivered by the said corporation defendants and the said firms in those States, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so fixed and caused to be fixed; which said uniform and non-competitive prices were prices greatly in excess of the prices which but for the said unlawful conspiracy would at such times have prevailed for the said merchandise in the said business, trade and commerce, and were prices therefore unreasonable, and were a tax on the people of the said States of the said conspiracy amounting to a large sum of money, to wit, four million dollars, annually during the continuance of the same.

For and on account of such quantity of the said merchandise as was sold and delivered as aforesaid by any of such corporation de-

fendants or of such firms, in excess of amounts allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and de-
93 livered in excess, was, by the corporation defendants and firms so selling and delivering the same, paid into a common fund, held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, compensated, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as sold and delivered less than the amounts so allotted to them respectively, so it was not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy that each of the said corporation defendants and of the said firms also paid into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be the absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm, in disposing of its said allotment in carrying on the said business, trade and commerce, on its part faithfully should exercise every reasonable effort and due business diligence to maintain the prices so fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its said excess sales, in which case an equal amount was returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also made uniform and non-competitive as between all of the said corporation defendants and the said firms, in the said business, trade and commerce, among the said States of the conspiracy.

As a convenient intermediary and common agent between the said corporation defendants and the said firms, respectively and as a means of securing their co-operation in carrying out the said unlawful conspiracy, the said defendants made use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company, Limited, was also allowed and re-
94 quired to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of September, in the year nineteen hundred and three, during the period of time aforesaid, at and within the City of New York, in the State of New York, unlawfully did knowingly, deposit with the Continental Trust Company, of the said City of New York, the sum of twenty-six thousand dollars, in connection with the purchase of by the said trust company on behalf of the said Virginia-Carolina Chemical Company, and in the name of one Montrose Stuart, a clerk in the office of the said trust company, of twenty-six hundred shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Samuel T. Morgan, on the seventh day of October, in the same year nineteen hundred and three, and during the period of time aforesaid, at and within the said city of New York, in the State of New York, unlawfully did deliver to the said William DeC. Kessler, Vice-President of the said Colonial Development Company, Limited, three checks drawn by the said Virginia-Carolina Chemical Company, one upon the National City Bank, of New York City aforesaid, for eighty thousand dollars, another on the Bank of America, of New York City aforesaid, for fifty thousand dollars, and the other on the National Park Bank, of New York City aforesaid, for thirty-five thousand and four hundred and sixty-eight dollars, aggregating one hundred and sixty-five thousand and four hundred and sixty-eight dollars, as and for a payment, by the said Virginia-Carolina Chemical Company, to the said Colonial Development Company, Limited, of twenty cents a ton on its allotment under the said unlawful conspiracy; he the said Samuel T. Morgan, when and where he so as aforesaid delivered the said checks to the said William DeC. Kessler, well knowing the character and purpose of the same, and well knowing that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as acts on their parts respectively of engaging in the same, the said Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox,
95 J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, on the seventeenth day of September, in the year nineteen hundred and three, and during the period aforesaid, at the said City of New York, in the said State of New York, unlawfully did meet together to discuss and further the object of the said unlawful conspiracy; they the said Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy,

Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, when and where they so as aforesaid met together, each well knowing the character and purpose of the said meeting, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank E. Wilcox, on the first day of November, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did deliver to one W. W. Perkins, Secretary of the said American Fertilizing Company, a certain document, too voluminous to be here set forth, stating certain prices and terms of sale, fixed in pursuance of the said unlawful conspiracy, for the said fertilizer merchandise, in the States of North Carolina, South Carolina, Georgia, Florida, Alabama and Tennessee, for the spring season of the year nineteen hundred and four; he the said Frank E. Wilcox at the time and place when and where he so as aforesaid delivered the said document to the said W. W. Perkins, well knowing the character of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, and during the period of time aforesaid, at the town of Decherd, in the said Middle District of Tennessee, by and through one
96 F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, and during the period aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to

furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, and during the period of time aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at the City of Nashville, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, a certain notice of shipment, partly written and partly printed, in the words and figures following, that is to say:

"The Armour Fertilizer Works
Owned and operated by
Armour & Company.

Prudential Building,
Atlanta, Ga.

Duplicate.
To be Mailed with Bill of
Lading to Customer.

No. 612
March 10", 1905.

97 We have this day shipped from Nashville, Tenn. storage
To Bramlitt Hdw Co.
Corinth, Miss.
Charge to S. D. Bramlitt. Address same.

No. Bags.	Weight of bags.	Brand	Tons.
400	100	King Cotton 8.2.2	20

Order No. 4613.
Bill of lading herewith. Invoice will be mailed from Chicago.
Above quantities shipped 3 10 1905. Freight Terms.....
Car No. 13619. Via L. & N.
Charges prepaid $48.00.

THE ARMOUR FERTILIZER WORKS,
Per ALEX. LESLIE."

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the

said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Austin B. Carpenter, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Assistant Secretary of the said Colonial Development Company, unlawfully did sign his name, to wit, "A. B. Carpenter, Ass't Sec'y" on the face of a certain stock certificate, to wit, certificate No. 28, showing the ownership by one Thomas M. Green of fifty-one shares of the capital stock of the said Colonial Development Company; he the said Austin B. Carpenter, at the time and
98 place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his said act to be done in pursuance and to effect the object of the said conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles H. MacDowell, on the twelfth day of January, in the year nineteen hundred and five, and during the period of time aforesaid, at and within the city of Chicago, in the State of Illinois, unlawfully did sign his name, to-wit, "C. H. MacDowell," under the name of the Armour Fertilizer Works, and after the word "by" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Armour and Company, under the trade name of "Armour Fertilizer Works," offered to furnish and deliver at Corinth, in the State of Mississippi to one S. D. Bramlitt, twenty tons of the fertilizer merchandise aforesaid; he the said Charles H. MacDowell, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Acme Manufacturing Company, on the first day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the city of Wil-

mington, in the State of North Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of six hundred and twenty dollars for sixty-two shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Alabama Chemical Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Montgomery, in the State of Alabama, unlawfully did knowingly deliver its certain check drawn upon the Merchants and Planters-Farley National Bank, Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of William DeC. Kessler, as payment for forty-two shares of the capital stock of the said Colonial Development Company, Limited;

99 And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Anderson Phosphate and Oil Company, on the twenty-ninth day of August, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Anderson, in the State of South Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of five hundred and eighty dollars for fifty-eight shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly buy from the Carolina Savings Bank, Charleston, South Carolina, a draft upon the Citizens National Bank, of New York City, for the payment of the sum of seven thousand nine hundred and forty-nine dollars and forty-three cents to the order of one Frank E. Taylor, Vice-President and General Manager of the said Ashepoo Fertilizer Company;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and *and* during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly cause the said Frank E. Taylor to endorse the check last above mentioned payable to the order of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Blackshear Manufacturing Company, on the seventeenth day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Blackshear, in the State of Georgia, unlawfully did know-

ingly deliver to the Atlantic Coast Line Railroad Company six tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of E. J. Blume & Company, at Live Oak, in the State of Florida;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Etiwan Fertilizer Company, on the fourteenth day of December, in the year nineteen hundred
100 and three, and during the period of time aforesaid, at and within the town of Cairo, in the State of Georgia, by and through one P. H. Seabrook, its agent, unlawfully did knowingly offer and agree to furnish and deliver to the firm of Wight Brothers, of Cairo aforesaid, thirty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank Burbidge, on the first day of July, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Charleston, in the State of South Carolina, having then and there in his hands a certain check, dated the thirtieth day of June, in the same year nineteen hundred and four, drawn by the said Alabama Chemical Company upon the Continental National Bank of Chicago, for the payment of eleven hundred and forty-two dollars and ninety-seven cents to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Pay to order of People's National Bank, Colonial Development Co., Ltd., F. Burbidge, Pres."; he the said Frank Burbidge then and there, to wit, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William J. McCormack, on the ninth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, having then and there in his hands a certain check dated the fifth day of September, in the same year, drawn by the said New Orleans Acid & Fertilizer Company, upon the Louisiana National Bank of New Orleans, for the payment of seven hundred and fifty dollars to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Colonial Developm't Co., Frank Burbidge, Sec. & Treas., per Wm. J. McCormack"; he the said William J. McCormack, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy,

and to effect the object of the same, and as an act on its part of engaging in the same, the said Federal Chemical Company, of
101 Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the said State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, and during the period of time aforesaid, at Springfield afore-
102 said, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff & Williams, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Goulding Fertilizer Company, Limited, on the twenty-fifth day of November, in the year nineteen

hundred and three, and during the period of time aforesaid, at and within the town of Cullman, in the State of Alabama, by and through one W. E. Craig, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one John Sutterer, at Cullman aforesaid, three hundred and seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the sixth day of September, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Pensacola, in the State of Florida, having then and there in his hands a certain check, dated the fifth day of September, in the same year nineteen hundred and three, drawn by the said Alabama Chemical Company upon Merchandise Merchants and Planters-Farley National Bank of Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of W. DeC. Kessler, unlawfully did sign his name, to wit, "W. DeC. Kessler," upon the back of the said check next below the written words "Pay to the order of Colonial Development Co."; he the said William DeC. Kessler then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the back of the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the said fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Vice-President of the said Colonial Development Company, unlawfully did sign his name, to wit, "W. DeC. Kessler, V. P." on the face of the said stock certificate in the name of Thomas M. Green; he the said William DeC. Kessler, at the time and place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his act to be done in pursuance and to effect the object
103 of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Gulfport Cotton Oil Fertilizer and Manufacturing Company, on the twenty-seventh day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-four hundred dollars for and in respect of twelve thousand tons of the fertilizer merchandise aforesaid, allotted to the said Gulfport Cotton Oil, Fertilizer and Manufacturing Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy,

and to effect the object of the same, and as an act on its part of engaging in the same, the said Home Mixture Guano Company, on a day in the year nineteen hundred and three to the said grand jurors unknown, and during the period of time aforesaid, at and within the City of Columbus, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Jackson Fertilizer Company, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Jackson, in the State of Mississippi, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Marietta Fertilizer Company, on the twenty-first day of July, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by and through one L. W. Reeves, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one James A. Boyd, at Jonesboro aforesaid, seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said James G. Tinsley, on the third
104 day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Nashville, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley; he the said James G. Tinsley, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Meridian Fertilizer Factory, on the seventh day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Cullman, in the State of Alabama, by its agent E. L. Robbins, un-

lawfully did knowingly offer to furnish to C. A. Steifelmeyer one hundred and fifty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge; he the said
105 William D. Rhea, then and there, to wit, at the time and place when and where he so directed and required the said E. W. Connell to sign his name as aforesaid to the said check, well knowing the nature and contents of the said check, and that his said direction and requirement were in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid; he the said William D. Rhea then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the said document, well knowing the character of the same, and well knowing his said act to be one done in pursuance of and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said New Orleans Acid & Fertilizer Company, on

the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars for seventy-five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Old Dominion Guano Company, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-six hundred and twenty dollars, for and in respect of
106 thirteen thousand one hundred tons of the fertilizer merchandise aforesaid, allotted to the said Old Dominion Guano Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William L. Peel, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did sign his name, to wit, "W. L. Peel, Prest.," to a certain check, to wit, a check drawn by the Maddox-Rucker Banking Company upon the National Park Bank, New York, for the payment of twenty-six hundred and twenty dollars to the order of the said Colonial Development Company, Limited; he the said William L. Peel, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Planters Chemical Company, on the thirtieth day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Talladega, in the State of Alabama, unlawfully did knowingly pay the said Colonial Development Company, Limited, the sum of fifty dollars for five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Read Phosphate Company, on the fifth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Hartselle, in the State of Alabama, unlawfully did knowingly offer to sell and deliver to one S. E. Stewart, at that place, forty to fifty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of en-

gaging in the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here
107 set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid; he the said Abram C. Read, then and there, to wit, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved, Nashville, Tenn. Dec. 6, 1904," and above the word "Manager," upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof, offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid; he the said Abram C. Read then and there, to wit, at the time and place when and where he so as aforesaid signed his name to the last mentioned document, well knowing the character and contents of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said F. S. Royster Guano Company, on the thirtieth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine thousand three hundred and fourteen dollars and seventy-four cents, on account of such merchandise sold and delivered by the said F. S. Royster Guano Company in excess of its allotment under the aforesaid unlawful conspiracy;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles F. Burroughs, on the
108 twenty-fifth day of March, in the year nineteen hundred and four, and during the period of time aforesaid, at and within

the City of Norfolk, in the State of Virginia, unlawfully did sign his name, to wit, "C. F. Burroughs," under the word "countersigned" and above the words "Vice-President" upon the face of a certain document, partly written and partly printed, too voluminous to be here set forth in full, wherein and whereby the said F. S. Royster Guano Company and he the said Charles F. Burroughs, as Vice-President thereof, offered to sell to one J. W. Carter, and to deliver to him at Maxton, in the State of North Carolina, ten tons of the fertilizer merchandise aforesaid; he the said Charles F. Burroughs, at the time and place when and where he so as aforesaid signed his name to the said document, well knowing the character and contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Savannah Guano Company, on the second day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did knowingly pay to the said Frank Burbidge the sum of nine hundred and forty dollars for ninety-four shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said A. J. Ives, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did sign his name, to wit, "A. J. Ives, Secty. & Treas." to a certain check, to wit, a check drawn by the Savannah Guano Company upon the Merchants National Bank, Savannah, Georgia, for the payment of three thousand one hundred and forty dollars to the order of New York Exchange; he the said A. J. Ives, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further n pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Southern States Phosphate and Fertilizer Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of the time aforesaid, at and within the City of Augusta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine hundred and sixty dollars for ninety-six shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Chemical and Oil Company, on the third day of October, in the year nineteen hundred and three,

and during the period of time aforesaid, at and within the Town of Troy, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand dollars for and in respect of one-half of forty thousand tons of the fertilizer merchandise aforesaid allotted to the said Standard Chemical and Oil Company, as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Guano and Chemical Manufacturing Company, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand seven hundred and seventy-four dollars and seventy-seven cents as a partial payment for and in respect of the fertilizer merchandise aforesaid, allotted to the said Standard Guano and Chemical Manufacturing Company, as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Swift & Company, on the first day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by its agent, J. Z. Elliott, unlawfully did knowingly offer to furnish to one W. P. Diehl thirty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

And that, further in pursuance of the said unlawful con-
110 spiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes & Bro., at Oxford, Alabama, a certain letter of the tenor following, to wit:

T. G. Tinsley, Pres't & Treas. Allen Hardison, Sec'y.

Tennessee Chemical Company, Manufacturers and Importers of Ox Fertilizers.

NASHVILLE, TENNESSEE, *May* 17, '05.

Messrs. D. P. Haynes & Bro., Oxford, Ala.

DEAR SIRS:—I am in receipt of your favor of the 16th and beg to state we could not allow any discount further than the 5% for cash settlement. We will be glad to have you settle in cash on this basis if you desire to do so, but are sorry to state we are not in a position to offer you any further discount.

Yours truly, T. G. TINSLEY, *President;*

he the said T. Garland Tinsley then and there, to wit, at the time and place when and where he so as aforesaid caused the said letter to be written and sent as aforesaid, well knowing that the same was so written and sent in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part in engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Company, James G. Tinsley. By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon the Mercantile National Bank, New York, for the payment of
111 sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley; he the said T. Garland Tinsley, at the same time and place when and where he so as aforesaid wrote the said endorsement on the back of the said check, well knowing the contents of the same, and that his said act was done in pursuance of and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Valley Fertilizer Company, on the second day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Florence, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars, as a partial payment for and in respect of fertilizer merchandise aforesaid, allotted to the said Tennessee Valley Fertilizer Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on their parts respectively, of engaging in the same, the said Frank Burbidge,

Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson, during the period of time aforesaid, at the City of New York, in the State of New York, the City of Washington, in the District of Columbia, Old Point Comfort and Hot Springs, in the State of Virginia, St. Augustine, in the State of Florida, and French Lick Springs, in the State of Indiana, unlawfully did as officers, directors and attorney of the said Colonial Development Company, Limited, meet together for the purpose of discussing and attending to the affairs of the said Colonial Development Company, Limited; they the said Frank Burbidge, Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson when and where they so met together aforesaid, well knowing the purpose of such meetings, and well knowing their acts in the premises to be acts in pursuance and to effect the object of the said unlawful conspiracy, and that the same were done as acts on their parts respectively of engaging in the said unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, during the period of time aforesaid, and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form aforesaid, unlawfully did engage in a conspiracy in restraint of trade and commerce among the several States; Against the
112 peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

SECOND COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the first count described, and were so engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord, nineteen hundred and three at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the grand jurors unknown, and engage in a conspiracy, among themselves and with such other

unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid; which said unlawful conspiracy in this count mentioned then and there was a conspiracy for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described; that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing and causing to be fixed, uniform and non-competitive prices, by them to be styled "current, reason-
113 able market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such times prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum ther-of during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be the

absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on the said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its excess sales, in which case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of pay-
114 ment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their co-operation in carrying out the said unlawful conspiracy, the said defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, and as being acts on the part of the said corporation and individual defendants respectively of engaging in that conspiracy, are now here in this count charged to be acts by the same corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned, and to have been acts on the part of the said corporation and individual defendants respectively of engaging in the last-named unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the

said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of trade and commerce among the several States;
115 against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

THIRD COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the said first count described, and so were engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the said United States, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the said United States, to wit, the offense of engaging in a combination, among themselves and with such other unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid, which said unlawful conspiracy in this count mentioned then and there was a conspiracy to engage in a combination for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and com-
116 merce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them to be styled "current,

reasonable market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such time prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful combination and ninety per centum thereof during the second year; it being a further element of the said unlawful combination in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be — absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on the said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its excess sales, in which
117 case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their cooperation in carrying out the said unlawful combination, the said

defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful combination; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, are now here in this count charged to be acts by the said corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a con-
118 spiracy to commit an offense against the said United States;

Against the peace and dignity of the said *said* United States; *Against the peace and dignity of the said United States,* and contrary to the form of the statute in such case made and provided.

Fourth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in

connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State, but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchan-
119 dise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the aforesaid business and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section one of the said Act of Congress, approved July 2, 1890, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Ala-

bama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company,
120 and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly engage in a conspiracy in restraint of commerce among the several States, to wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, whereby the said commerce was restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise which were maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the period of such unlawful conspiracy, and greatly in excess of those prices which would have otherwise prevailed in the said States during the period of such unlawful conspiracy, and were therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby earnest money was given to secure the maintenance of such prices and compensation was made to those losing volume of business by reason of maintaining such prices, that is to say:

There was from time to time allotted to each of said corporation

defendants and firms an amount of tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporations defendants and firms paid into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sums becoming due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which faithfully maintained such uniform and non-competitive prices and failed to make sales
121 and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but sold and delivered through itself and its subsidiary companies a minimum amount thereof required as a guarantee of good faith, received from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid fell short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies made such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, as a penalty upon such excess sales, paid into such common fund like amounts per ton on the said respective kinds of fertilizers, divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means whereby said unlawful conspiracy was effected, a corporation of Ontario, Canada, whose stock was apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was the common fund aforesaid into which was paid the earnest money and penalties on excess sales aforesaid, and from which was paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which the same was operated and directed.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that within the period aforesaid of said unlawful conspiracy in this count of this indictment mentioned, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and did do and perform such acts as acts on their respective parts of engaging in the said unlawful conspiracy in this count of this indictment mentioned, and that each of such defendants at the time and place when

and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant- respectively, then and there well knew the character of such act and that such
122 act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, and as an act on the part of such defendant in engaging in the same, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year, nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the
123 tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to

Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

124

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit,
125 "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawul conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec. 6, 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abraham C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P.
126 Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said corporation and individual defendants, during the period of time aforesaid, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

FIFTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen

hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the
127 other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so

carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, approved July 2, 1890, the said corporation de-
128 fendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, and engage in a conspiracy among themselves and with such other unknown corporations and persons, in restraint of commerce among the several States, to-wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid by which unlawful conspiracy said commerce was to be restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the

various points of delivery in the said States of the conspiracy,
129 which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy, and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices, that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to make sales and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales as aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose
130 treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary

and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful conspiracy was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that such act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

131 In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Dercherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one

Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesand, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company,
132 on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of

Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District
133 of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his, the said E. W. Connell's name as such Treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fer-

tilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennecss, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn., Dec. 6 1904" and
134 above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for

the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

135 SIXTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United

States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An
136 Act to protect trade and commerce against unlawful restraints and monopolies"; that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorneys of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and in the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section 5440 of the Revised Statutes of the United States, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack,
137 George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Roys-

ter, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the United States, to wit, to engage in a combination in restraint of commerce among the several States, namely, a combination in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, and did then and there so conspire to commit the aforesaid offense by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy; and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices; that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to
138 make sales and deliveries of such merchandise through itself and its subsidiary — amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation

defendants and firms which, through itself and its subsidiary companies, should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful combination was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that
139 such act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the

object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at
140 West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and

within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchan-
141 dise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Arndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee,

unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Man-
142 ager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec 6 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid. in the said Middle District of Tennessee,

unlawfully did cause to be written and sent by mail to "D. P. Haynes and Bro.," at Oxford, Alabama, that certain letter of the date
143 set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley, By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did conspire to commit an offense against the United States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

ABRAM M. TILLMAN,
United States Attorney.

(Endorsed as follows:) No. 963. United States Circuit Court, Middle District of Tennessee. *The United States vs. Virginia-Carolina Chemical Company et als.*

Indictment for violating Act of Congress approved July 2, 1890, and entitled "An Act to Protect Trade and Commerce against unlawful restraints and monopolies," and Section 5440 R. S. U. S.

A True Bill. Robert Q. Stewart, Foreman of the Grand Jury.

Names of Witnesses Sworn and Examined Before the Grand Jury.

J. C. Adams, Henry E. Ahern, Lee Ashcraft, Eugene Atkinson, N. E. Barker, W. F. Barrett, James C. Beck, J. M. Berry, W. W. Bird, L. W. Botts, Clarence Braden, S. D. Bramlitt, A. P. Brantley,
B. D. Brantley, Dewitt Brown, H. C. Brown, Arthur Bussey,
144 Hezekiah Bussey, E. J. Blume, James A. Boyd, William F. Burns, Oscar Bright, J. W. Carter, B. G. Clark, C. W. Comes, E. W. Connell, Charles Earle Currie, R. L. Davis, Joseph Denee, W. P. Diehl, A. M. Dobbs, John V. Dobson, C. H. Drayton, W. L. Dumas, J. B. Duncan, S. Eastland, T. B. Edwards, Culpepper Exum, H. C. Fischer, J. B. Fiser, Albert French, C. A. Gambrill, A. H. George, John E. Gibbs, William Gilchrist, James M. Goldsmith, A. A. Green, E. P. Grice, W. A. Hansell, G. A. Harrington, H. J. Harby, Allen Hardison, L. C. Hayne, J. L. Haynes, D. P. Haynes, R. W. Henderson, P. W. Hendricks, E. R. Hodgson, junior, E. R.

Hodgson, senior, J. L. Horn, W. E. Hudson, T. J. Hunt, R. H. Johnston, T. V. Kessler, E. M. Kirk, Henry Kirn, H. L. Law, Alexander Leslie, J. A. Lindsey, W. Hampton Logan, Harry Luck, John A. Lewis, W. F. McKenzie, Robert F. Maddox, H. W. Malloy, E. R. Manning, H. L. Milligan, J. Allen Moore, M. B. Neece, W. J. Oliver, E. Thomas Orgain, D. B. Osborne, Every M. Paget, W. W. Perkins, Dr. J. D. Plunkett, F. B. Pope, William Price, Charles Rainey, Frederick Rayfield, Isaac W. Read, W. A. Reynolds, I. T. Rhea, W. E. Richards, H. A. Rogers, V. N. Roadstrum, W. G. Sadler, G. W. Sanders, E. M. Sentelle, W. McR. Smith, R. G. Sparrow, J. F. Stackley, C. A. Steifelmeyer, S. E. Stewart, W. B. Stratford, John Sutterer, E. R. Taber, Frank E. Taylor, W. B. Taylor, W. D. Tharin, J. R. Timmerman, J. W. Todd, S. W. Travers, George H. Tucker, E. Van Winkle, J. T. Welch, O. C. Wiley, C. H. Willcox, T. B. Williams, Benjamin L. Willingham, W. S. Wight, E. G. Woodling.

Filed 11:30 A. M., May 25, 1906. H. M. Doak, Clerk, by E. L. Doak, Deputy Clerk. Abram M. Tillman, U. S. Atty.

I, H. M. Doak, Clerk of the Circuit Court of the United States in and for the Middle District of Tennessee, hereby certify that the foregoing is a true, perfect, and complete copy of an indictment filed as thereupon endorsed, etc. In witness whereof I have hereunto signed my name and affixed the seal of said court, at my office, this the 26th day of May, 1906.

[SEAL OF COURT.] H. M. DOAK, *Clerk.*

145 *Warrant.*

UNITED STATES OF AMERICA, *Eastern District of Virginia, set:*

To the Marshal of the Eastern District of Virginia, Greeting:

Whereas complaint in writing, on oath, has been made to me charging that Frank E. Wilcox of Norfolk, Va., stands indicted by the grand jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said Frank E. Wilcox on the eighth day of July, in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, did in the Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said Frank E. Wilcox did unlawfully conspire with divers other persons and corporations to com-

mit an offense against the United States, to-wit, the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States; and application has been made to me that the said Frank E. Wilcox may be arrested and imprisoned and removed or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee;

Now therefore, you are hereby commanded to arrest the
146 said Frank E. Wilcox if he be found within your said District, and bring him forthwith before me at my Chambers in Richmond, in order that he may be dealt with according to law.

Richmond, July 14, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge.

Marshal's Return.

Pursuant to the within writ, I have taken the defendant Frank E. Wilcox into custody and now have him before Hon. Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia.

July 14, 1906.

MORGAN TREAT,
United States Marshal.

Conclusions of the Court.

Filed July 14th, 1906.

THE UNITED STATES
vs.
FRANK E. WILCOX.

The conclusion reached by the Court is that in a proceeding for the arrest and removal of persons charged with a violation of the laws of the United States pursuant to section 1014 of the Revised Statutes of the United States, before a United States District
147 Judge sitting in the State of Virginia, in which State there no longer exists the right of a preliminary examination upon a criminal charge prior to the trial upon the merits, when such Judge is called upon to act as well in the matter of the apprehension of such persons, as in their removal to the jurisdiction in which they have been indicted, that upon the government's presentation of a sufficient indictment regularly found by a grand jury in a court of the United States, properly charging the commission of an offense within the district in which such indictment is found, coupled with proof of the identity of the person indicted, it is its duty to properly bail such person for appearance before the Court in which he is indicted, or cause him to be removed thereto.

Order Allowing Bail.

Filed July 14, 1906.

UNITED STATES OF AMERICA, *Eastern District of Virginia, set:*

The within named Frank E. Wilcox having been brought before me, and identified; and it appearing by a duly authenticated copy of an indictment that he stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al,*" for violation of section one of the act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of Section 5440 of the Revised Statutes of the United States, it is ordered that the said Frank E. Wilcox give
148 bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial before said Court under the said indictment, or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee, to be there dealt with according to law.

Richmond, Va., July 14th, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the
Eastern District of Virginia.

Warrant of Imprisonment and Removal.

UNITED STATES OF AMERICA, *Eastern District of Virginia, set:*

The President of the United States to the United States Marshal of the Eastern District of Virginia, Greeting:

Whereas it has been made to appear that Frank E. Wilcox stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled: "The United States *vs.* Virginia-Carolina Chemical Company *et al,*" for violation of section one of the act of Congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States; and whereas the said Frank E. Wilcox having been brought before me, and identified; and a certified copy
149 of said indictment furnishing probable cause to believe him to be guilty as therein charged, and whereas it was thereupon ordered by me that said defendant give bail in the sum of five thousand dollars with one or more sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial under said indictment, or that in de-

fault thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee to be there dealt with according to law; and the said defendant having failed and refused to give bail as required, therefore;

You are hereby commanded in the name and by the authority of the said United States to imprison the said Frank E. Wilcox in accordance with law, and that with all convenient speed you remove him hence to the said Middle District of Tennessee and there surrender him to the Marshal of that District, there to be dealt with according to law.

Richmond, Va., July 14, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

Marshal's Return on Foregoing Warrant

Executed July 14, 1906, by taking the within named defendant Frank E. Wilcox into custody, but before the order of removal was executed, a writ of *Habeas Corpus* was issued by order of the Circuit Court of the United States for the Eastern District of Virginia, sitting at Richmond, Virginia, commanding me to produce the body of the said Frank E. Wilcox before the said United States
150 Circuit Court in the City of Richmond, Virginia, forthwith, and in pursuance of said writ of *Habeas Corpus*, I took the said Frank E. Wilcox before the United States Circuit Court as aforesaid, by which court said writ of *Habeas Corpus* was discharged and an appeal allowed to the said Frank E. Wilcox to the Supreme Court of the United States, pending which appeal the said Frank E. Wilcox was by order of said Circuit Court discharged from custody on bond conditioned for his appearance before said Circuit Court to abide such order as should be made by said Circuit Court upon return of the mandate of said Supreme Court of the United States upon determination of said appeal.

Richmond, Virginia, July 14, 1906.

MORGAN TREAT,
United States Marshal.

Statement of Proceedings and Order.

Filed July 14, 1906.

THE UNITED STATES OF AMERICA, *Eastern District of Virginia:*

THE UNITED STATES
vs.
FRANK E. WILCOX.

This is an application under the provisions of Section 1014 of the United States Revised Statutes for a warrant for the removal of

Frank E. Wilcox to the Middle District of Tennessee and comes before me as follows:

151 The District Attorney for this District, together with Mr. E. T. Sanford, Counsel for the United States, presented to me a verified complaint of Morgan Treat, United States Marshal for this District, with the certified copy of an Indictment filed on May 25th, 1906, in the Circuit Court of the United States for the Middle District of Tennessee in the case of the United States *vs.* Virginia-Carolina Chemical Company and other defendants, including among such defendants the said Frank E. Wilcox.

Said complaint and copy of said indictment are made parts of this order. Upon the exhibition of this Indictment and affidavit and the *ex parte* motion of the counsel for the United States I made an order for the arrest of said Frank E. Wilcox and his production before me.

This order was duly executed by the said Marshal, who arrested the said Frank E. Wilcox and brought him before me in Richmond on this 14th day of July, 1906, as shown by his return. When the accused was so brought before me it was moved by the counsel for the United States that inasmuch as the indictment charged offenses against the United States triable in the Circuit Court of said United States for the Middle District of Tennessee, and the identity of the defendant was admitted, that an order be forthwith made for the commitment of said Frank E. Wilcox for trial before said Circuit Court.

This motion was made upon the certified copy of the indictment without any further testimony, the identity of the party arrested and brought before me as the Frank E. Wilcox mentioned in the Indictment being admitted.

And thereupon the defendant, Frank E. Wilcox offered himself as witness in his own behalf, and being about to be sworn, the United States, by its counsel, thereupon objected to the witness being

152 sworn or to any testimony being given in rebuttal of the indictment in these proceedings on the ground that the identity of the defendant being admitted, inasmuch as the indictment on its face charges offenses against the United States committed and triable in the jurisdiction in which the defendant stands indicted, no evidence is admissible here to impeach the indictment, and the order of commitment should be made without other proof.

The defendant's counsel thereupon offered to prove by the defendant, and other witnesses then and there present, that the Circuit Court for the Middle District of Tennessee had no jurisdiction over the person of said defendant touching the offense charged in said indictment, in that defendant and said other witnesses would, if permitted, testify that said Frank E. Wilcox has not been within the State of Tennessee for the period of seven years next preceding the 10th day of July, 1906, and neither has he, through himself or any agent ever done any business of any kind in the State of Tennessee within seven years next preceding the 14th day of July, 1906, and that he has never at any time made, entered into or engaged in any of the conspiracies mentioned in the said indictment or any other

conspiracy within the Middle District of Tennessee, nor did he by or through any agent, attorney or attorneys do or attempt to do within the said Middle District of Tennessee any of the matters and things alleged and aver-ed in said indictment to have been done by him and the other defendants named therein; nor did he personally, or by any agent or attorney join in or assent to said alleged
153 conspiracies or any of them in the Middle District of Tennessee or at any time or any place do any act in furtherance thereof or to effect the objects of said alleged conspiracies or any of them in the Middle District of Tennessee.

Nor has the defendant done, or performed, or been engaged in, or a party to the same, or any of them, in any other place or places, at any other time or times whatsoever in the said District.

Thereupon Counsel for the Government renewed its objections as aforesaid. After hearing counsel on both sides, the Court announced its conclusions as follows:—

"The conclusion reached by the Court is that in a proceeding for the arrest and the removal of persons charged with a violation of the laws of the United States pursuant to section 1014 of the Revised Statutes of the United States, before a United States District Judge, sitting in the State of Virginia, in which State there no longer exists the right of a preliminary examination upon a crime charged prior to the trial upon the merits, when said Judge is called upon to act as well in the matter of the apprehension of such persons, as in their removal to the jurisdiction in which they have been indicted, that upon the Government's presentation of a sufficient indictment, regularly found by a grand jury in a Court of the United States, properly charging the commission of an offense within the district in which such indictment is found, coupled with proof of the identity of the person indicted, it is its duty to properly
154 bail such person for appearance before the court in which he is indicted, or cause him to be removed thereto."

Therefore it was ordered that the testimony offered is inadmissible, and will not be received, and I therefore made the following order:

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The within named Frank E. Wilcox having been brought before me, and identified; and it appearing by a duly authenticated copy of the indictment that he stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," for violation of section one of the act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States, it is ordered that the said Frank E. Wilcox give bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial before said Court

under said indictment; or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee, to be there dealt with according to law.

Richmond, Va., July 14th, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

155 And after said order had been made and the defendant declined to give bond, the Counsel for the United States moved that the warrant do issue directed to the Marshal of this District for the imprisonment and removal of the said Frank E. Wilcox to the Middle District of Tennessee and his delivery to the custody of the United States Marshal of that district.

On such motion counsel for the said Frank E. Wilcox objected and again offered the said Frank E. Wilcox as a witness, together with the other witnesses here-before referred to, to establish the same matters and facts as hereinbefore stated with regard to the objection to the order for the commitment of the said Frank E. Wilcox which testimony was again offered and was again objected to by the counsel for the United States on the same grounds as above set forth, and on the further ground that these matters could not now be inquired of in this stage of the proceedings, and was again excluded by the court, to all of which counsel for the said Frank E. Wilcox duly excepted and had the exceptions noted and entered.

I therefore issued a warrant directed to the Marshal as follows:

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

Richmond, Va., July 14, 1906.

Warrant of Imprisonment and Removal.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The President of the United States to the United States
156 Marshal of the Eastern District of Virginia, Greeting:

Whereas it has been made to appear that Frank E. Wilcox stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said court entitled: "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," for violation of section one of the act of Congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States; and whereas the said Frank E. Wilcox having been brought before me, and identified; and a certified copy of said indictment furnishing probable cause to believe him to be guilty as therein charged, and whereas it was thereupon ordered by me that said defendant give bail in the sum of five thousand dollars with one or more sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial under said indictment, or that in default thereof he

be imprisoned for seasonable removal to the said Middle District of Tennessee to be there dealt with according to law; and the said defendant having failed and refused to give bail as required, therefore:

You are hereby commanded in the name and by the authority of the said United States to imprison the said Frank E. Wilcox in accordance with law, and that with all convenient speed you remove him hence to the said Middle District of Tennessee and there surrender him to the Marshal of that District there to be dealt with according to law.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

Richmond, Va., July 14, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge.

Richmond, Va., July 14, 1906.

157 *Certificate of Clerk.*

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

I, G. E. Bowden, Clerk of the District Court of the United States for the Eastern District of Virginia, do hereby certify that the foregoing is a full and true transcript of the record and proceedings in the therein entitled cause made in obedience to the direction in the return of the Honorable Edmund Waddill, Jr., Judge of said Court to the writ of certiorari, attached to and made a part of said record.

In witness whereof, I have hereunto set my hand and affixed the seal of the said District Court, at the City of Richmond, this 14th day of July, A. D 1906.

[Seal United States District Court.]

G. E. BOWDEN,
Clerk United States District Court,
By JOSEPH P. BRADY,
Deputy Clerk U. S. District Court.

Certificate of United States District Judge.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

I, Edmund Waldill, Jr., Judge of the District Court of the United States for the Eastern District of Virginia do hereby certify that the foregoing is a full and true transcript of the record and
158 proceedings had before me in the therein entitled cause.

In witness whereof, I hereunto set my hand and seal of said court at Richmond, this 18th day of July, A. D. 1906.

[Seal United States District Court.]

EDMUND WADDILL, JR.,
United States District Judge.

159 *Conclusions of the Court.*

Filed July 14th, 1906.

In the United States Circuit Court for the Eastern District of Virginia.

In the Matter of the Petition of FRANK E. WILCOX for Writs of *Habeas Corpus* and Certiorari.

FRANK E. WILCOX, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

Petitioner alleges that he is unlawfully deprived of his liberty. He prays that by virtue of the writ of *Habeas Corpus,* he may be discharged from custody. I find from the petition, from its exhibits, and from respondent's reply that petitioner has been committed to the Marshal of the Eastern District of Virginia by an order of the United States District Judge of that District, with directions to remove petitioner to the Middle District of Tennessee, in order that he may be there tried on an indictment in which he with others, is charged with a violation of the laws of the United States. The proceedings so resulting were conducted under the provisions of section 1014 of the Revised Statutes of the United States. The Judge so hearing the matter, and so issuing said order of removal, acted in conformity with like proceedings, as provided for in criminal actions in the state of Virginia, in which state petitioner resides, and where the application for his removal was made.

160 On the hearing of this petition, I am asked to permit petitioner to offer testimony, the object of which is to show that probable cause does not exist as to petitioner's guilt of the offense of which he is charged; that he was not within the limits of the jurisdiction of the Middle District of Tennessee when said offense is alleged to have been committed; and testimony tending to show that he is innocent of the charge alleged in the indictment returned against him. Petitioner insists that he should not be removed to said Middle District of Tennessee for trial, but should be discharged from arrest. Should I, on this hearing, permit such testimony? I find from the record before me, that the indictment charges conspiracy; that it is alleged therein that petitioner with others, did in the Middle District of Tennessee, conspire to commit an offense against the laws of the United States. The indictment, in my judgment, sufficiently sets forth such offense. I find that it is in due form, and that it charges a crime; that it alleges a conspiracy such as is prohibited by the laws of the United States; and that an overt act, as described in the statute is charged as having taken

place in the Middle District of Tennessee. Such being the charge, I am of the opinion, under the law applicable thereto, that the personal presence of petitioner in said jurisdiction was not essential; and that he can be lawfully proceeded against in that district; and if the allegations set out in the indictment are sustained by competent evidence, that a conviction there can be upheld.

If such be the case, does it not follow that the testimony offered by the petitioner is immaterial? The indictment charges the commission of a crime; alleges that the petitioner with others committed it; and the laws authorizes his conviction in the district to which he has been ordered removed, if an overt act in pursuance of
161 said conspiracy was committed there. Technical objections to said indictment should not be considered by me on this hearing; they should only be heard by the court in which the indictment was returned.

While it is true that the order to remove for trial should only be issued in cases where probable cause has been shown, it is equally true that a certified copy of the indictment, with proof of the identity of the party accused, has been in a number of well considered cases, held to establish probable cause, and to authorize the warrant of removal. It must be conceded that the authorities are conflicting; but to my mind the path we should follow has been plainly indicated by the opinions of that great tribunal, whose mandates we all obey, whose judgments are the supreme law of the land. In Beavers *v.* Hanckel, 194 U. S., 73, the case rested on the efficacy of the indictment; for no other evidence of guilt was offered. The indictment was held to be *prima facie* evidence of the existence of probable cause. It satisfied the requirements of the constitution, and the laws made thereunder. Why should not the indictment in the case we now have under consideration serve the same purpose? The testimony tendered is, as I understand this case, immaterial, and the identity of the accused is admitted. His guilt or innocence is not to be ascertained by testimony offered in this jurisdiction, in connection with questions involved in the proceedings relating to the warrant of removal, or this writ of *habeas corpus*. That matter must go to the jury impaneled by the court in which the indictment was returned. To hold otherwise would result in inextricable confusion, and to discharge the petitioner on the showing now made, would tend to impede the due administration of justice; and can
162 only be done, in my opinion, by a strained construction of the statutes.

The writ will be dismissed, and petitioner will be remanded to the custody of the Marshal.

NATHAN GOFF,
U. S. Circuit Judge.

July 14th, 1906.

Order Dismissing Petition and Discharging Writ of Habeas Corpus and Allowing Appeal.

Filed July 14th, 1906.

In the Circuit Court of the United States for the Eastern District of Virginia.

In the Matter of the Petition of FRANK E. WILCOX for Writs of *Habeas Corpus* and Certiorari.

FRANK E. WILCOX, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

This cause was on this, the 14th day of July, 1906, heard before the Honorable, the Circuit Court of the United States for the Eastern District of Virginia, the Honorable Nathan Goff, Circuit Court Judge, presiding, upon the petition of said Frank E. Wilcox
163 in this cause and the return of the Marshal, the defendant, thereto, and the return of the District Judge of the Eastern District of Virginia (by agreement the copy of the findings and order of said District Judge being here now taken as his return to said writ of certiorari, and the motion of the petitioner, by his counsel, hereinafter mentioned.

The petition and the return of the Marshal thereto were read, and thereupon the petitioner presented himself as a witness and his counsel moved the Court that he be sworn in order to testify as such, and as such witness to prove the facts averred and set forth in said petition, which facts were then and there repeated and restated to the Court; and his counsel then also stated that the said witness, and other persons then present as witnesses, would testify and prove that the said facts set forth and averred in the petition and exhibits, and repeated by him to the Court, were true.

Thereupon the Honorable Edward T. Sanford, Special Counsel representing the United States, and also the defendant Marshal, objected to the swearing of the said petitioner as a witness and also to the admission of said evidence, upon the ground that said evidence was immaterial and irrelevant, and that it was not allowable to contradict or transverse by evidence in this Court the averments of the indictment which had been found against the petitioner in the Circuit Court of the United States for the Middle District of Tennessee, and that there was no error in the action of the District Judge. The objection so made was sustained, and the witness not allowed to be sworn nor allowed to testify to the facts above stated, to which action of the Court the petitioner then and there excepted.

164 Thereupon it was ordered and adjudged by the said Court that the petition be dismissed and the writ of *habeas corpus* heretofore issued in this cause upon the said petition be and the same is hereby dismissed and discharged; and that the said Frank E. Wilcox be remanded to the custody of said Morgan Treat, U. S. Marshal, for the Eastern District of Virginia, to be dealt with by him according to the directions of the writ of the process under which he had custody of the said Frank E. Wilcox.

Thereupon, the petitioner presented his petition, setting forth that he was aggrieved by the said order dismissing the said writ of *habeas corpus*, and praying that he be allowed to prosecute an appeal from said final order or judgment, to the Supreme Court of the United States under and according to the law of the United States in that behalf made together with his assignment of error in that behalf which appeal is allowed; and the petitioner having been allowed and the said appeal being hereby granted, the petitioner, by his counsel, thereupon moved the Court that he be enlarged or admitted to bail pending the decision of his said case upon said appeal; and thereupon it was accordingly ordered that the said petitioner and appellant be, and he is hereby enlarged upon his bond and admitted to bail, pending the said appeal to the Supreme Court of the United States; said bond to be in the penal sum of $5,000.00, to be taken and approved by the Clerk of this Court and conditioned for the said petitioner and appellant to appear before this Court to abide such order as shall be made by this Court upon the mandate of the Supreme Court of the United States upon the determination of petitioner's said appeal; and upon the execution by the said Frank E. Wilcox of such bond, with surety or sureties, to be approved by the Clerk of this Court, he will be enlarged and admitted to bail. The Clerk will take as surety any satis-

165 factory guaranty company.

The opinion of the Court in dismissing the petition and discharging the writ of *habeas corpus* is made part of the record herein and will be copied by the Clerk in the transcript on appeal.

NATHAN GOFF,
U. S. Circuit Judge.

July 14, 1906.

Appearance Bond.

Filed July 14th, 1906.

In the Circuit Court of the United States for the Eastern District of Virginia.

In the Matter of the Petition of FRANK E. WILCOX for Writs of *Habeas Corpus* and Certiorari.

FRANK E. WILCOX, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

We, as principal, and American Surety Company of New York a guaranty and surety company, organized and existing under the laws of the State of New York, with power and authority to become surety for principals in appearance bonds, jointly and severally acknowledge ourselves to owe and to be bound to the United States of America in the penal sum of Five Thousand Dollars ($5,000.00), severally to be made and levied of our goods, chattels, lands and tenements, if default be made herein.

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The condition of this obligation is as follows: Whereas the said Frank E. Wilcox, being detained in the custody of Morgan Treat, United States Marshal for the Eastern District of Virginia, under commitment and warrant of removal to the Circuit Court of the United States for the Middle District of Tennessee, granted by the Honorable Edmund Waddill, Jr., Judge of the District Court for the Eastern District of Virginia, presented his petition for and sued out a writ of *habeas corpus* from the Circuit Court of the United States for the Eastern District of Virginia, and the said writ of *habeas corpus* duly issued to the said Treat, Marshal, and he made his return thereto; and the said matter of *habeas corpus* came on for hearing before the said Circuit Court of the United States for the Eastern District of Virginia, on the 14th day of July, 1906, when by order thereof the said petition was dismissed and the said writ of *habeas corpus* discharged, and the said Frank E. Wilcox remanded to the custody of the said Morgan Treat, Marshal, to be proceeded with as provided by law; and

Whereas, from the said final order dismissing the said petition and writ of *habeas corpus*, the said Frank E. Wilcox prayed an appeal to the Supreme Court of the United States, which was granted and said appeal perfected; and

Whereas, the said Circuit Court of the United States allow- said appeal, ordered that pending said appeal the said Frank E. Wilcox upon the execution of a bond in the penal sum of Five Thousand Dollars ($5,000.00), conditioned as by said order was provided, might be enlarged and admitted to bail;

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Now, therefore, in compliance therewith, and in order to be so enlarged, and said Frank E. Wilcox as principal, and the said American Surety Company of New York, as surety, execute this bond upon the condition that, if the said Frank E. Wilcox shall duly personally appear in and before the Circuit Court of the United States for the Eastern District of Virginia, then and there to answer the exigency and determination of said appeal, and personally abide the final decision and determination of the said Supreme Court of the United States and of the said Circuit Court of the United States, upon the mandate of the said Supreme Court of the United States, and obey and abide the orders of said Circuit Court of the United States, and not depart without leave upon the conditions aforesaid, and upon the entry of said orders upon said appeal, then and in that event this bond or obligation shall be void; but otherwise it shall be and remain in full force and effect.

In witness whereof, the said Frank E. Wilcox as principal, and the said American Surety Company of New York as surety, the said surety being represented by and through Robert Le Masurier, its duly authorized agent and attorney, have hereunto on this the 14th day of July, 1906, set their hands.

FRANK E. WILCOX. [SEAL.]

[Seal of American Surety Company.]

AMERICAN SURETY COMPANY OF NEW YORK,
By ROB'T LE MASURIER, *Agent.*

Signed, sealed and delivered in the presence of
JOSEPH P. BRADY, *Clerk.*

168 *Notice of Appeal.*

Filed July 14th, 1906.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of FRANK E. WILCOX for Writs of *Habeas Corpus* and Certiorari.

FRANK E. WILCOX, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia; JOSEPH P. BRADY, Deputy Clerk of the District Court of the United States for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

SIRS: Please take notice that Frank E. Wilcox petitioner above named hereby appeals to the Supreme Court of the United States from the final order made and entered on the 14th day of

July, 1906, by the Honorable Nathan Goff, Judge of the Circuit Court of the United States, Fourth Judicial Circuit of Virginia, discharging his application for writs of *habeas corpus* and certiorari and from each and every part of said order.

Dated at the City of Richmond, State of Virginia, on the 14th day of July, 1906.

Respectfully,

JOHN J. VERTRESS,
JAMES C. BRADFORD,
JOHN S. MILLER,
Attorneys for Petitioner and Appellant.

169 *Petition for Appeal.*

Filed July 14th, 1906.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of FRANK E. WILCOX for Writs of *Habeas Corpus* and Certiorari.

FRANK E. WILCOX, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

The petition of the above named petitioner Frank E. Wilcox for an order, allowing an appeal to the Supreme Court of the United States from the final order in the above styled cause, discharging the writs of *habeas corpus* and certiorari in this cause and remanding petitioner to the custody of the said Morgan Treat, United States marshal.

Frank E. Wilcox, the petitioner and appellant above named, feeling himself aggrieved by the final order heretofore made and entered by this Court in this cause on the 14th day of July, 1906, whereby it was ordered that his petition for a writ of *habeas corpus*, directed to said Morgan Treat, United States Marshal, in and for the said District of Virginia, and his writ of certiorari, directed to Hon. Edmund Waddill, Jr., United States District Judge for said
170 District, commanding him to return all the proceedings, warrants, depositions, examinations, commitments and record of all proceedings against your petitioner to the Circuit Court of the United States, were, after the same had been duly granted and return made thereon by this Honorable Court, discharged, and petitioner was by said order remanded to the custody of said Morgan Treat, United States Marshal, as aforesaid.

Now come, Jno. J. Vertress and Jas. C. Bradford, his attorneys

and counsel, praying this court for an order allowing your petitioner to prosecute an appeal from said final order of the United States Circuit Court to the Supreme Court of the United States, and according to the laws of the United States in that behalf made.

Your petitioner is advised by his counsel that *in* the proceedings referred to in the petition for writs of *habeas corpus* and certiorari, and the said order discharging the same have infringed the constitutional rights of your petitioner and that the commitment of your petitioner and the restraint of his person referred to in said petition and under said order is without authority of law and that the said United States District Judge acting as United States Commissioner, before whom your petitioner was arraigned, as set forth in said petition hereinbefore referred to had no jurisdiction to either require bail of petitioner or to commit petitioner in default thereof, and your petitioner desires in good faith to submit the constitutional questions and other questions involved to the Supreme Court of the United States for their determination.

And your petitioner will ever pray, etc.

JOHN J. VERTRESS,
JAMES C. BRADFORD,
JOHN S. MILLER,
Attorneys for Petitioner and of Counsel.

171 UNITED STATES OF AMERICA, *Eastern District of Virginia:*

Frank E. Wilcox, being duly sworn on his oath, deposes and says that he is the petitioner above named, that the foregoing petition is true of his own knowledge, except as to those matters which are therein stated on his information and belief, and as to those matters, he believes them to be true.

—— ——.

Sworn to before me this 14th day of July, 1906.

JOSEPH P. BRADY,
Clerk of the United States Circuit Court,
Eastern District of Virginia.

Assignment of Errors.

Filed July 14th, 1906.

In the Supreme Court of the United States.

In the Matter of the Petition of FRANK E. WILCOX for Writs of *Habeas Corpus* and Certiorari.

FRANK E. WILCOX, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

The petitioner, Frank E. Wilcox, by John J. Vertress and
172 Jas. C. Bradford and John S. Miller, his Counsel in connection with his petition of appeal herein, entered herein, to the Supreme Court of the United States, from the final order made and entered in the United States Circuit Court of the Fourth Judicial Circuit in and for the Eastern District of Virginia, discharging the writs of *Habeas Corpus* and certiorari and remanding petitioner to the custody of the said Morgan Treat, Marshal, *and* makes and files the following assignment of errors:

1. The court erred in discharging the petitioner's writs of *Habeas Corpus* and Certiorari and remanding him to the custody of the United States Marshal.

2. In refusing to grant the prayer of said writs.

3. In refusing to discharge said petitioner.

4. In holding that the restraint of the petitioner's liberty is legal.

5. In holding that the restraint of your petitioner is not in violation of his substantial rights.

6. In holding that said alleged indictment or any count thereof stated an offence against the laws of the United States.

7. In holding that the alleged indictment, or any count thereof was sufficient upon which to base a warrant of removal.

8. In holding that there was sufficient evidence of probable cause.

9. In holding that the warrant of removal made by the United States District Judge for the Eastern District of Virginia was issued upon the finding of probable cause; and in not holding that said order & warrant of removal were unauthorized & void because said District Judge refused to receive or hear any evidence offered by petitioner.

10. In holding that the alleged indictment with proof of
173 identity was conclusive evidence of probable cause.

11. In holding that upon the introduction in evidence of the alleged indictment with proof of identity that the defendant, your petitioner, was not entitled to introduce evidence offered by him and in refusing to hear or receive evidence offered by him to

show that the alleged offence, charged in said indictment and in each count thereof had not been committed by him in the State of Tennessee, in which state the indictment was found and in so holding, violating Article V and Article VI of the Amendments to the Constitution of the United States in that he was deprived of his liberty without due process of law.

12. In failing to hold that your petitioner is deprived of his liberty without due process of law in violation of Article V of the Amendments to the Constitution of the United States, in that said District Judge refused to hear or receive any evidence offered by your petitioner in that the complaint and evidence referred to herein, which were the sole authority for the petitioner's arrest and commitment as aforesaid failed to charge the petitioner with any crime against the laws of the United States.

13 In failing to hold that the petitioner's detention was in violation of Article V of the amendments to the Constitution of the United States in that the said United States District Judge, sitting as United States Commissioner and the United States District Judge has such jurisdiction to order the arrest and commitment of your petitioner, and that your petitioner is held to answer for a crime without any sufficient or valid indictment of a grand jury.

14. In failing to hold that restraint of your petitioner is in violation of Article IV of the Amendments to the Constitution of the United States, because it appears from the indictment upon
174 which the warrant in this case was issued that it was wholly void.

15. In failing to hold — the restraint of your petitioner is in violation of the provisions of Article IV of the amendments to the Constitution of the United States for the reasons particularly specified in his petition for a writ of *habeas corpus.*

16. In holding that a warrant of removal should issue for the reason that the proceedings conclusively show, by the indictment that the venue for the facts alleged in the indictment is not and was not in the Middle District of the State of Tennessee or in the State of Tennessee.

17. In failing to hold that the restraint of your petitioner is in violation of the provisions of Article VI of the amendments to the constitution of the United States for the reason that upon the proof offered to be made and rejected by the United States District Judge, sitting as a commissioner, and the United States District Judge and this Honorable Court, sitting upon the hearing of the petition of *habeas corpus,* and by the averments of said petition which were not controverted, it was conclusively shown that the offences charged in the indictment were not committed in the Middle District of the State of Tennessee or in the State of Tennessee, and that he could not be lawfully tried by a jury of the State of Tennessee and of the Middle District of Tennessee where said indictment was found.

18. In holding that the warrant of removal was properly issued, as the record and proceedings conclusively show that the alleged offence, complained of in the indictment and the several counts thereof, did not occur within the Middle District of the State of

Tennessee, or in the State of Tennessee, and that your pe-
175 titioner did not conspire to commit any offence within the State of Tennessee, or in the Middle District thereof.

19. In holding that your petitioner was lawfully in the custody of said Morgan Treat, United States Marshal in and for the Eastern District of Virginia, and was lawfully deprived of his liberty by him by due process of law.

20. For other errors appearing on the record, by reason whereof, the petitioner prays that the said order, discharging said writs of *Habeas Corpus* and Certiorari be reversed and the petitioner discharged from custody.

JOHN J. VERTRESS,
JAMES C. BRADFORD,
JOHN S. MILLER,
Attorneys for Petitioner and Appellant.

Appeal Bond.

Filed July 14th, 1906.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of FRANK E. WILCOX for Writs of *Habeas Corpus* and Certiorari.

FRANK E. WILCOX, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

176 Know all men by these presents, that, we, Frank E. Wilcox and James G. Tinsley his surety, are held and firmly bound unto the United States of America, in the full and just sum of Five hundred dollars to be paid to the United States, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this 14th day of July, 1906.

Whereas, lately, to-wit; on the 14th day of July, 1906, at the Circuit Court of the United States, in and for the Fourth Judicial Circuit, Eastern District of Virginia, in a proceeding therein pending, an order was entered discharging the writs of *habeas corpus* and certiorari, of the above named petitioner in the above mentioned proceeding and said petitioner having duly obtained an appeal from the said order to the Supreme Court of the United States and filed a copy thereof in the Clerk's office of said Circuit Court to review the same,

Now, the Condition of the Above Obligation, is such, that if the said petitioner Frank E. Wilcox, shall prosecute said appeal to effect and shall answer all costs if he should fail to make said appeal good, then this obligation to be void; else to remain in full force and effect.

FRANK E. WILCOX. [SEAL.]
JAMES G. TINSLEY. [SEAL.]

Sealed, and delivered, and taken and acknowledged, this 14th day of July, 1906, before me,

JOSEPH P. BRADY, *Clerk.*

UNITED STATES OF AMERICA,
Eastern District of Virginia, To wit:

177 James G. Tinsley being duly sworn says that he is worth more than the sum of Five Hundred Dollars, over and above all his just debts and liabilities.

Sworn to before me this 14th day of July, 1906.

JOSEPH P. BRADY, *Clerk.*

Citation.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of FRANK E. WILCOX for Writs of *Habeas Corpus* and Certiorari.

FRANK E. WILCOX, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia; Jos. P. BRADY, Deputy Clerk of the District Court of the United States for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Judge L. L. Lewis, United States District Attorney for the Eastern District of Virginia; Jos. P. Brady, Clerk of the United States Circuit Court for the Eastern District of Virginia; Morgan Treat, United States Marshal in and for the Eastern District of Virginia; Hon. Edmund
178 Waddill, Jr., United States District Judge for the Eastern District of Virginia, and Jos. P. Brady, Deputy Clerk of the United States District Court for the Eastern District of Virginia:

You are cited and admonished to be and appear at the Supreme Court of the United States at the City of Washington, within thirty days from the date of this writ, pursuant to an appeal duly allowed

by the Circuit Court for the Fourth Judicial Circuit, Eastern District of Virginia and filed i . the Clerk's Office of said Court on the 14th day of July, 1906, in the cause entitled, in the matter of the petition of Frank E. Wilcox for writs of *habeas corpus* and certiorari, Frank E. Wilcox, appellant, *versus* Morgan Treat, United States Marshal in and for the Eastern District of Virginia, Jos. P. Brady, Deputy Clerk of the District Court of the United States in and for said Eastern District of Virginia, and Hon. Edmund Waddill, Jr., United States District Judge in and for said Eastern District of Virginia, Appellees, to show cause, if any, why the final order of said Circuit Court, rendered against the appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Hon. Nathan Goff, Judge of the United States Circuit Court, this 14th day of July, A. D., 1906.

NATHAN GOFF,
Judge of the Circuit Court of the United States.

Acceptance of Service by United States District Judge.

Legal service of the within Citation is hereby acknowledged this 21st July, 1906.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

179 *Marshal's Return.*

Executed this 23rd day of July 1906, by delivering in person in the City of Richmond, Va., a true copy of the within citation to the following named persons viz: L. L. Lewis United States District Attorney for the Eastern District of Virginia, Joseph P. Brady Clerk of the United States Circuit Court for the Eastern District of Virginia, Joseph P. Brady Deputy Clerk of the United States District Court for the Eastern District of Virginia.

MORGAN TREAT,
United States Marshal.

Further executed this 23rd day of July 1906, by delivering in person in the City of Richmond, Va. to Morgan Treat United States Marshal for the Eastern District of Virginia, a true copy of this citation.

MORGAN TREAT,
United States Marshal,
By M. J. ENRIGHT,
Office Deputy Marshal.

Order Transmitting Record.

nd thereupon, it is ordered by the Court here that a transcript
e record and proceedings in the cause aforesaid, together with all
gs thereunto relating, be transmitted to the Supreme Court of the
ed States of America, and the same is transmitted accordingly.
este:

JOSEPH P. BRADY,
Clerk United States Circuit Court.

Clerk's Certificate.

E UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

, Joseph P. Brady, Clerk of the Circuit Court of the United States
the Eastern District of Virginia, do hereby certify that the fore-
ng is a full and true transcript of the record and proceedings of
said Circuit Court, together with all things thereunto relating,
he therein entitled cause.

n testimony whereof, I hereunto set my hand and affix the seal
he said Circuit Court of the United States for the Eastern District
Virginia, at Richmond, this 10th day of August, A. D. 1906.

[Seal United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States
for the Eastern District of Virginia.

Endorsed on cover: File No. 20,339. E. Virginia C. C. U. S.
m No. 374. Frank E. Wilcox, appellant, *vs.* Morgan Treat,
ited States marshal in and for the eastern district of Virginia,
al. Filed August 14, 1906. File No. 20,339.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 375.

GEORGE BRADEN, APPELLANT,

vs.

MORGAN TREAT, UNITED STATES MARSHAL IN AND FOR THE EASTERN DISTRICT OF VIRGINIA, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

FILED AUGUST 14, 1906.

(20,340.)

(20,340.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906.

No. 375.

GEORGE BRADEN, APPELLANT,

vs.

MORGAN TREAT, UNITED STATES MARSHAL IN AND FOR THE EASTERN DISTRICT OF VIRGINIA, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

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a In the Supreme Court of the United States.

In re Petition of GEORGE BRADEN, for Writs of *Habeas Corpus* and Certiorari.

GEORGE BRADEN, Appellant,

vs.

MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia; JOS. P. BRADY, Deputy Clerk of the District Court of the United States for the Eastern District of Virginia, and Hon. EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Judge L. L. Lewis, United States District Attorney for the eastern District of Virginia; Jos. P. Brady, Clerk of the United States Circuit Court for the eastern district of Virginia; Morgan Treat, United States Marshal in and for the eastern District of Virginia; Hon. Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia, and Jos. P. Brady, Deputy Clerk of the United States District Court for the eastern District of Virginia:

You are cited and admonished to be and appear at the Supreme Court of the United States at the City of Washington, within thirty days from the date of this writ, pursuant to an appeal duly allowed by the Circuit Court for the Fourth Judicial Circuit, Eastern District of Virginia, and filed in the Clerk's office of said Court on the 14th day of July, 1906, in the cause entitled, in the matter of the
b petition of George Braden for writs of *habeas corpus* and certiorari, George Braden, appellant, *versus*, Morgan Treat, United States Marshal in and for the eastern District of Virginia, Jos. P. Brady, Deputy Clerk of the District Court of the United States in and for said eastern District of Virginia, and Hon. Edmund Waddill, Jr., United States District Judge, in and for said Eastern District of Virginia, Appellees, to show cause, if any, why the final order of said Circuit Court, rendered against the appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Hon. Nathan Goff, Judge of the United States Circuit Court, this 14th day of July, A. D., 1906.

NATHAN GOFF,
Judge of the Circuit Court of the United States.

c Legal service of the within citation is hereby acknowledged this 21st July, 1906.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

Executed this 23rd day of July 1906, by delivering in person in the City of Richmond, Va. a true copy of the within citation to the following named persons viz: L. L. Lewis United States District Attorney for the Eastern District of Virginia, Joseph P. Brady Clerk of the United States Circuit Court for the Eastern District of Virginia, Joseph P. Brady Deputy Clerk of the United States District Court for the Eastern District of Virginia.

MORGAN TREAT,
United States Marshal.

Marshal's Fees for service $6.00.

Further executed this 23rd day of July 1906 by delivering in person in the City of Richmond, Va. to Morgan Treat United States Marshal for the Eastern District of Virginia, a true copy of the within citation.

MORGAN TREAT,
United States Marshal,
By M. J. ENRIGHT,
Office Deputy Marshal.

Marshal's Fees for service $2.00.

d [Endorsed:] No. —. Circuit Court of the U. S., Eastern District of Virginia. In the matter of the Petition of George Braden for Writs of *Habeas Corpus* and Certiorari. George Braden, Appellant, *vs.* Morgan Treat, United States Marshal &c., *et als.*, Appellees. Citation. Filed this 14th day of July, 1906. Joseph P. Brady Clerk.

1 *Transcript of Record.*

THE UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

At a Circuit Court of the United States for the Eastern District of Virginia, begun and held at the Court Rooms in the Custom House, in the City of Richmond, Virginia, on the first Monday in April, being the second day of the same month, in the year of our Lord one thousand, nine hundred and six.

Present: The Honorable Nathan Goff, Judge of the Circuit Court of the United States for the Eastern District of Virginia.

Among other were the following proceedings, to-wit:

In the Matter of the Petition of GEORGE BRADEN for Writs of *Habeas Corpus* and Certiorari.

GEORGE BRADEN, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

2 *Petition for Writs of Habeas Corpus and Certiorari.*

Filed July 14, 1906.

In the District Court of the United States for the Eastern District of Virginia.

In the Matter of the Petition of GEORGE BRADEN for Writs of *Habeas Corpus* and Certiorari.

GEORGE BRADEN, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

To the Honorable the Judges of the Circuit Court of the United States for the Eastern District of Virginia:

The petition and complaint of George Braden respectfully shows to the Court:

1.

That your petitioner is a citizen of the United States and is a citizen and resident of the Eastern District of — and is unlawfully imprisoned and restrained of his liberty by Morgan Treat, United States Marshal for the Eastern District of Virginia, in the City of Richmond, and County of Henrico, in said District.

3 That your petitioner is held by said Marshal under color and claim of authority of the United States, by virtue of a warrant for removal claimed to have been issued under section 1014 of the Revised Statutes of the United States, dated July 14th, 1906, signed by the Honorable Edmund Waddill, Jr., Judge of the District Court of the United States for the Eastern District of Virginia, and has been committed and is detained only under and by virtue of said warrant, and not by virtue of any judgment, decree or final order of any Court.

2.

On the 14th day of July, 1906, at the said City of Richmond, in said District, complaint in writing signed and sworn

to by Morgan Treat, United States Marshal in and for said District, a copy of which is hereto attached, marked "Exhibit A," and made part hereof, was presented to the Honorable Edmund Waddill, Jr., Judge of the District Court of the United States for the said District, in and by which it was averred that he, the said Morgan Treat, United States Marshal, had good cause to believe and did believe that your petitioner, has been indicted by the Grand Jury of the Circuit Court of the United States in and for the Middle District of Tennessee, for that your petitioner on the 8th day of July, 1903, and during the period of time from that date until and on the first day of September, 1905, and being during said period President of the Federal Chemical Companies, corporations existing under and by the laws of the States of Delaware and Kentucky, did in said Middle District of Tennessee, unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section 1 of the Act of Congress
4 approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and that on the 8th day of July, 1903, at and within the County of Davidson in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, your petitioner did unlawfully conspire with divers other persons and corporations to commit an offense against the United States, to-wit: The offense of engaging in a combination in restraint of trade and commerce among the several States of the United States, all as more fully set out in an indictment filed in the said Circuit Court of the United Sstates in and for the Middle District of Tennessee on May 25th, 1906, a certified copy of which indictment said complaint states was thereto attached and made a part of said complaint, and in and by which said complaint, said complainant did, therefore, charge that your petitioner did commit the said offense against the United States in the manner and form as set forth in said indictment, and did furthermore aver in said complaint upon information and belief, that your petitioner is now believed to be within the Eastern District of Virginia.

And said complainant, said Morgan Treat, United States Marshal, in and by said complaint did therefore pray that your petitioner might be arrested, imprisoned, and removed or bailed, as the case might be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee, and further dealt with according to law; all of which will appear from the said complaint, a copy of which is hereto attached as aforesaid, reference thereto being hereby made for greater certainty. And that thereupon, to-wit, on the said 14th day of July, 1906, a warrant for his arrest was
5 issued by the Honorable Edmund Waddill, Jr., judge as aforesaid, upon the aforesaid complaint, which came to the hands of the said Morgan Treat, Marshal as aforesaid, and he, in obedience thereto, arrested your petitioner and brought him before the said the Honorable Edmund Waddill, Jr., Judge as aforesaid, and made return of said warrant, endorsed thereon, and a copy of said warrant

with the endorsement thereon is hereto attached marked "Exhibit B" and made a part hereof.

3.

That thereupon then and there, the United States Attorney in and for the said Eastern District of Virginia, for and on behalf of the United States, did offer and introduce in evidence to and before the said Judge, in support of the averments of the said complaint of said Morgan Treat, United States Marshal, a certified copy of the said indictment mentioned and referred to in the said complaint. A certified copy of said indictment so offered and introduced in evidence is hereto attached, marked "Exhibit C," and made a part hereof, and the identity of your petitioner with and as the George Braden mentioned and referred to in said indictment as one of the defendants therein, having been then and there admitted by your petitioner, the Government, the United States of America, introduced or offered no other or further proof or evidence in support of the said complaint or of the averments therein, but rested its case upon the said hearing of the said complaint before the said Judge.

4.

That thereupon, then and there, your petitioner, by his counsel, proceeded to offer, and offered, proof and evidence to show
6 that your petitioner did not within the said Middle District of Tennessee, on the 8th day of July, 1903, or during the period between the 8th day of July, 1903 and the 1st day of September, 1905, or at any other time, engage in the said alleged conspiracies in the said indictment mentioned, or any or either of them, or at any time or at any place, join in or assent to the said alleged conspiracies, engaged in or entered upon in said Middle District of Tennessee, or any or either of them, or at any time or at any place do any act in furtherance of, or to effect the object of said alleged conspiracies engaged in in said Middle District of Tennessee, or any or either of them. Thereupon, then and there, the Counsel for the Government, upon the said hearing, did object to the introduction on the behalf of your petitioner of the said evidence or any evidence or proof tending to contradict or controvert the respective averments, or any or either of them in the said indictment and in the respective counts thereof, viz: that your petitioner did engage in the said alleged conspiracy in said indictment mentioned and referred to, in the said Middle District of Tennessee, in manner and form as in the said indictment in that behalf aver-ed, or to contradict or controvert or disprove any of the averments in the said indictment contained,—on the ground, then and there stated, that upon the said hearing of said complaint the said certified copy of the said indictment was conclusive evidence of every fact therein averred to sustain and prove upon the said hearing the said complaint of the said Morgan Treat, United States Marshal, and the averments thereof, and the probable cause of the commission by your petitioner of the

said supposed offenses in the said indictment mentioned and
7 of any and every of them in the manner and form as in the said indictment aver-ed, and in that behalf, your petitioner then and there took the witness stand and demanded to be sworn as a witness in his own behalf, but the Counsel for the Government objected, and the objection was by said Judge sustained, and he was not permitted to be sworn or to testify.

5.

That thereupon, then and there, your petitioner by his counsel stated to the Judge that he would prove, and then and there his said counsel offered to prove by your petitioner as a witness and other witnesses then and there present, the following facts, which facts are true, that is to say: The facts proposed and offered to be proved stated and set forth in the 4th paragraph of this petition, the said paragraph being the one next preceding this paragraph.

6.

That the United States Attorney, on behalf of the Government, then and there objected to the introduction or reception by the said Judge of the said evidence so offered on behalf of your petitioner, and to each and every part thereof, on the ground hereinbefore stated, which objection was then and there sustained by the Court, on the ground that the said certified copy of the said indictment so introduced on behalf of the Government, the identity of your petitioner as aforesaid being admitted by your petitioner as aforesaid, was conclusive evidence of the existence of every fact stated in the indictment, including the averments that the conspiracies
8 alleged in the said indictment were engaged in in the Middle District of Tennessee, and that therefore said evidence or any evidence offered by and on behalf of your petitioner to controvert, contradict or disprove the averments of the said indictment in that behalf, or any or either of them, was incompetent and inadmissible; and the said Judge, then and there, on the grounds aforesaid, excluded and refused to receive said evidence so offered on behalf of your petitioner, or any part thereof, to which ruling of the Judge, your petitioner then and there, by his counsel, duly excepted.

7.

That thereupon the said Judge, upon the complaint and upon the evidence so introduced for and on behalf of the Government as aforesaid, made and signed a certain order reciting his said rulings as aforesaid and ordering as in said order appears, which said order is as follows:

THE UNITED STATES OF AMERICA,
Eastern District of Virginia:

THE UNITED STATES
vs.
GEORGE BRADEN.

This is an application under the provisions of section 1014 of the United States Revised Statutes for a warrant for the removal of George Braden to the Middle District of Tennessee and comes before me as follows:

9 The District Attorney for this District, together with Mr. E. T. Sanford, Counsel for the United States, presented to me, a verified complaint of Morgan Treat, United States Marshal for this District, with the certified copy of an indictment filed on May 25th, 1906, in the Circuit Court of the United States for the Middle District of Tennessee in the case of the United States *vs.* Virginia-Carolina Chemical Company and other defendants, including among such defendants the said George Braden.

Said complaint and copy of said indictment are made parts of this order.

Upon the exhibition of this indictment and affidavit and the *ex parte* motion of the counsel for the United States, I made an order for the arrest of said —— —— and his production before me.

This order was duly executed by the said Marshal who arrested the said George Braden and brought him before me in Richmond on this 14th day of July, 1906, as shown by his return. When the accused was so brought before me it was moved by the Counsel for the United States that inasmuch as the indictment charged offenses against the United States triable in the Circuit Court of said United States for the Middle District of Tennessee, and the identity of the defendant was admitted, that an order be forthwith made for the commitment of said George Braden for trial before said Circuit Court.

This motion was made upon the certified copy of the indictment without any further testimony, the identity of the party arrested and brought before me as the said George Braden mentioned in the indictment being admitted.

It was further stated and agreed that while the defendant George Braden was not a resident of the Eastern District of Virginia,

10 he was present in this District with his counsel, and that so far as the jurisdiction in the Eastern District of Virginia was concerned, he consented to these proceedings being instituted here, and to their being conducted here with the same force and effect, and in like manner as if he were a resident of the Eastern District of Virginia; and further more waived the previous issuance of any bench warrant for his arrest, from the Circuit Court of the Middle District of Tennessee, if the same were necessary.

And thereupon the defendant, George Braden offered himself as a witness in his own behalf, and being about to be sworn, the United States, by its Counsel, thereupon objected to the witness being *d*worn, or to any testimony being given in

rebuttal of the indictment in these proceedings, on the ground that the identity of the defendant being admitted, inasmuch as the indictment on its face charges offenses against the United States committed and triable in the jurisdiction in which the defendant stands indicted, no evidence is admissable here to impeach the indictment, and the order of the commitment should be made without other proof.

The defendant's counsel thereupon offered to prove by the defendant, and other witnesses then and there present, that the Circuit Court for the Middle District of Tennessee had no jurisdiction over the person of said defendant touching the offense charged in said indictment, in that defendant and said other witnesses would, if permitted, testify,—that your petitioner did not within the Middle District of Tennessee on the 8th day of July, 1903, or during the period between the 8th day of July, 1903 and the 1st day of September 1905, or at any other time, engage in the said alleged con-
11 spiracies, engaged in or entered upon in the said Middle District of Tennessee, or any or either of them, or at any time or at any place do any act in furtherance of, or to effect the object of said alleged conspiracies engaged in in the Middle District of Tennessee or any or either of them. Nor has defendant done, or performed, or been engaged in, or been a party to the said conspiracies engaged in in the Middle District of Tenn., or any of them in any other place or places at any other time or times whatsoever.

Thereupon counsel for the Government renewed its objections as aforesaid.

After hearing counsel on both sides the Court announced its conclusions as follows:—

"The conclusion reached by the Court is that in a proceeding for the arrest and the removal of persons charged with a violation of the laws of the United States pursuant to section 1014 of the Revised Statutes of the United States, before a United States District Judge, sitting in the State of Virginia, in which State there no longer exists the right of a preliminary examination upon a crime charged prior to the trial upon the merits, when said Judge is called upon to act as well in the matter of the apprehension of such persons, as in their removal to the jurisdiction in which they have been indicted, that upon the Government's presentation of a sufficient indictment regularly found by a grand jury in a court of the United States, properly charging the commission of an offense within the district in which such indictment is found, coupled with proof of the identity of the person indicted, it is its duty to properly bail such person for appearance before the court in which he is indicted, or cause him to be removed thereto."

12 Therefore it was ordered that the testimony offered is inadmissable, and will not be received, and I therefore made the following order:

UNITED STATES OF AMERICA,
Eastern District of Virginia, sct:

The within named George Braden having been brought before me and identified; and it appearing by a duly authenticated copy of an indictment that he stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al,*" for violation of section one of the act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States, it is ordered that the said George Braden give bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial before said Court under the said indictment; or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee, to be there dealt with according to law.

Richmond, Va., July 14, 1906.

(Signed) EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

And after said order had been made and the defendant
13 declined to give bond, the Counsel for the United States moved that the warrant do issue directed to the Marshal of this District for the imprisonment and removal of the said George Braden to the Middle District of Tennessee, and his delivery to the custody of the United States Marshal of that District.

On such motion counsel for the said George Braden objected and again offered the said George Braden as a witness, together with the other witnesses here-before referred to, to establish the same matters and facts as hereinbefore stated with regard to the objection to the order for the commitment of the said George Braden which testimony was again offered and was again objected to by the Counsel for the United States on the same grounds above set forth, and on the further ground that these matters could not now be inquired of in this stage of the proceedings, and was again excluded by the Court, to all of which counsel for the said George Braden duly excepted and had the exceptions noted and entered.

EDMUND WADDILL, JR., *Judge.*

I therefore issued a warrant directed to the Marshal as follows:

Warrant of Imprisonment and Removal.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The President of the United States to the United States Marshal of the Eastern District of Virginia, Greeting:

Whereas it has been made to appear that George Braden stands indicted in the Circuit Court of the United States for the Mid-
14 dle District of Tennessee in cause No. 963 in said court entitled: "The United States *vs.* Virginia-Carolina Chemical

Company *et al.*," for violation of section one of the act of Congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States; and whereas the said George Braden having been brought before me, and identified; and a certified copy of said indictment furnishing probable cause to believe him guilty as therein charged, and whereas it was thereupon ordered by me that said defendant give bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial under said indictment, or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee to be there dealt with according to law; and the said defendant having failed and refused to give bail as required, therefore;

You are hereby commanded in the name and by the authority of the said United States to imprison the said George Braden in accordance with law, and that with all convenient speed you remove him hence to the said Middle District of Tennessee and there surrender him to the Marshal of that District, there to be dealt with according to law.

Richmond, Va., July 14th, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

Richmond, Va., July 14, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

8.

Your petitioner further says that he is advised, and he charges and submits, that under and by virtue of Clause 3, of Section 2, of Article 3, of the Constitution of the United States, and of the Sixth Amendment to the said Constitution, your petitioner is entitled to be tried and can only be indicted and tried for any alleged offenses against the laws of the United States, in the State and District in which the offense, which the indictment charges, was committed; that the said supposed offenses in the said indictment mentioned and charged, were not, nor was any or either of them, committed in the said Middle District of Tennessee; that none of the alleged acts, transactions, matters or things which are in the said indictment mentioned or referred to as being and constituting the supposed engaging by this defendant in the said alleged conspiracies in the said indictment referred to, or any or either of them, were done or had or took place within the said Middle District of Tennessee, and no alleged act, transaction, matter or thing, in the said indictment mentioned or referred to as being the doing by this defendant of an act to effect the object of said conspiracy was done or held or took place within the Middle District of Tennessee; That your petitioner did not within the Middle District of

Tennessee, on the 8th day of July, 1903 or during the period between the 8th day of July, 1903 and the 1st day of Sept. 1905, or at a[illegible] other time engage in the said alleged conspiracies engaged in or entered upon in the said Middle District of Tennessee, or any or either of them, or at any time or at any place do any act in furtherance of or to effect the object of said alleged conspiracies engaged in in the Middle District of Tennessee or any or either of them, or do any act in pursuance of the said alleged conspiracies in the said indictment mentioned, or any or either of them, engaged in in the Middle District of Tennessee in furtherance of the said alleged conspiracies in said indictment mentioned, or any or either of them, or to effect the object of the same, or as an act on the part of your petitioner of engaging in the same.

9.

That thereupon the United States Attorney moved the com-
16 mitment of your petitioner to the Marshal of the said District for removal to the Middle District of Tennessee for trial upon the indictment in the United States Circuit Court for said District, and the said Attorney for the United States thereupon made a motion before the Honorable Edmund Waddill, Jr., Judge, for the issuance of a warrant for the removal of your petitioner to the Middle District of Tennessee for trial as aforesaid in the United States Circuit Court for said District upon the said indictment, and the said motion was allowed, and said warrant was in pursuance thereof issued by the said Judge, and a copy thereof is embraced in the order of the said Judge hereinbefore recited and made a part hereof. That thereupon the said Marshal of the Eastern District of Virginia, to whom the said warrant was directed, took your petitioner into custody upon the said warrant and now holds your petitioner thereunder and threatens to take and remove your petitioner to the Middle District of Tennessee, as directed by the said warrant and will do so, unless your Honor shall issue the writ of *Habeas Corpus* herein prayed for. Your petitioner further says that in case your petitioner is removed under the said warrant to the said Middle District of Tennessee for trial upon said indictment and is there held for trial and tried upon said indictment, your petitioner will not be tried within the District in which the said alleged offenses charged in the said indictment were committed, as required by the Sixth Amendment to the Constitution of the United States, and by Clause 3, of Section 2, of Article 3 of said Constitution, and will be tried in violation of his rights under said provisions of the said Constitution. Your petitioner further says that he is advised, and he charges, that the said indictment does not charge the com-
17 mission by your petitioner of any offense against the Laws of the United States, and that *is* same is in that behalf insufficient and void.

10.

That the imprisonment and detention of your petitioner is without authority of law, and the said proceedings before said United

States District Judge are illegal and the said warrant of removal was illegally issued and in violation of Article 3, Section 2, of the Federal Constitution, and of the Sixth Amendment to the said Constitution; and that then and there by the said rulings of the said District Judge, in the exclusion of the said evidence and in holding that the said certified copy of the indictment was conclusive evidence as aforesaid, and in refusing to permit your petitioner to introduce any evidence on his behalf, as aforesaid, your petitioner was deprived of rights secured to him by the said provisions of the said Constitution and by section 1014 of the Revised Statutes, and was and is by said Morgan Treat, United States Marshal, deprived of his liberty without due process of law.

Wherefore your petitioner prays that a writ of *Habeas Corpus* be issued, directed to the said United States Marshal of the Eastern District of Virginia, who has your petitioner in custody, demanding him to bring the body of your petitioner before this Court forthwith; and further that a writ of Certiorari be directed to the said Honorable Edmund Waddill, Jr., Judge as aforesaid, commanding that he return all proceedings against this petitioner to this court forthwith, for such action as may be proper in the premises.

GEO. BRADEN.
J. P. HELEN, *Att'y.*

JOHN J. VERTRESS,
JAMES C. BRADFORD,
Counsel.

18 UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

George Braden being duly sworn, deposes and says that he has read the foregoing petition, and knows the contents thereof, and that the same is in all respects true.

GEO. BRADEN.

Sworn and subscribed to before me this 14th day of July, 1906.
JOSEPH B. BRADY,
Clerk U. S. Circuit Court.

EXHIBIT A.

UNITED STATES OF AMERICA, *Eastern District of Virginia, set:*

On this 14th day of July, A. D. 1906, at the City of Richmond, in the said District, before the Honorable Edmund Waddill, Jr., Judge of the District Court of the United States of America for the said District, comes Morgan Treat, United States Marshal in and for the said District, and upon his oath complains and says: that he has good cause to believe and does firm- believe that George Braden stands indicted by the grand jury of the Circuit Court

of the said United States in and for the Middle District of Tennessee, for that the said George Braden on the eighth day of July in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, being during said period President of the Federal Chemical Companies corporations existing under and by the laws of the States of Delaware and Kentucky did in the said Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on the said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said George Braden did unlawfully conspire with divers other persons and corporations to commit an offense against the United States, to-wit, the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States, all as more fully set out in an indictment filed in the said Circuit Court of the United States in and for the Middle District of Tennessee on May 25, 1906, in cause No. 963, entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," a certified copy of which indictment is hereto attached and made a part of this complaint; and complainant therefore charges that the said George Braden did commit the said offenses against the United States in manner and form as set forth in said indictment.

19

Complainant furthermore avers upon information and belief that said George Braden is now believed to be within the Eastern District of Virginia.

Wherefore this complainant prays that the said George Braden may be arrested and imprisoned and removed or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee, and further dealt with according to law.

MORGAN TREAT, *Marshal.*

Subscribed and sworn to before me by the above named Morgan Treat the day and year first above written.

20

EDMUND WADDILL, JR.,
U. S. District Judge.

Richmond, Va., July 14, 1906.

EXHIBIT B.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

To the Marshal of the Eastern District of Virginia, Greeting:

Whereas complaint in writing on oath, has been made to me charging that George Braden of Kentucky stands indicted by the grand jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said George Braden on the eighth day of July, in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, did in the Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on the said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said George Braden
21 did unlawfully conspire with divers other persons and corporations to commit an offense against the United States, to-wit, the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States; and application has been made to me that the said George Braden may be arrested and imprisoned and removed or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee;

Now, therefore, you are hereby commanded to arrest the said George Braden if he be found within your said District, and bring him forthwith before me at my Chambers in Richmond, in order that he may be dealt with according to law.

EDMUND WADDILL, JR.,
District Judge.

Richmond, July 10, 1906.

Pursuant to the within writ, I have taken the defendant George Braden into custody and now have him before Hon. Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia.

MORGAN TREAT,
United States Marshal.

July 14th, 1906.

22 EXHIBIT C.

In the Circuit Court of the United States of America for the Middle District of Tennessee, of the April Term, in the Year of Our Lord Nineteen Hundred and Six.

MIDDLE DISTRICT OF TENNESSEE, *act:*

The grand jurors for the United States of America, inquiring for the Middle District of Tennessee, upon their oath present, that before and on the eighth day of July, in the year of our Lord nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year of our Lord nineteen hundred and five, the following named corporations, respectively organized and existing under and authorized by the laws of the several States and of the foreign country here named in connection with them, and hereafter in this indictment called corporation defendants, to wit, the Virginia-Carolina Chemical Company, of New Jersey, Armour and Company, of Illinois, the Acme Manufacturing Company, of North Carolina, the Alabama Chemical Company, of New Jersey, the Anderson Phosphate & Oil Company, of South Carolina, the Ashepoo Fertilizer Company, of South Carolina, the Blackshear Manufacturing Company, of Georgia, the Etiwan Fertilizer Company, of South Carolina, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, The Furman Farm Improvement Company, of Georgia, the Goulding Fertilizer Company, Limited, of Great Britain and Ireland, The Goulding Fertilizer Company, of Florida, the Gulfport Cotton Oil, Fertilizer & Manufacturing Company, of Georgia, the Home Mixture Guano Company, of Georgia, the Jackson Fertilizer Company, of Mississippi, the Marietta Fertilizer Company, of Georgia, the Meridian Fertilizer Factory, of Mississippi, the National Fertilizer Company, of Tennessee, the New Orleans Acid and Fertilizer Company, of New Jersey, the Old Dominion Guano Company, of Georgia, the Planters Chemical Company, of Alabama, the
23 Read Phosphate Company, of West Virginia, the F. S. Royster Guano Company, of Virginia, the Savannah Guano Company, of Georgia, the Southern States Phosphate and Fertilizer Company, of Georgia, the Standard Chemical & Oil Company, of Alabama, the Standard Guano and Chemical Manufacturing Company, of Louisiana, Swift & Company, of Illinois, the Tennessee Chemical Company, of Tennessee, and the Tennessee Valley Fertilizer Company, of Alabama, and certain firms, to wit, the firms of A. D. Adair and McCarty Brothers and the firm of Wilcox, Ives & Company, did carry on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereafter in this indictment called the States of the conspiracy, as wholesale dealers in complete and alkaline fertilizers and in acid phosphates, nitrates, and potash salts suitable for fertilizers, which then were useful and valuable

articles of merchandise, indispensable for use on the soil of the said States of the conspiracy in order that the staple crops of those States might be raised therefrom; that the following named persons, hereafter in this indictment called individual defendants, to wit, Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, of the said Virginia-Carolina Chemical Company, and J. Rice Smith, agent and manager of the said Virginia-Carolina Chemical Company, and president of the Georgia Chemical Works hereinafter mentioned, Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, Fred G. Brown, president and treasurer of the said Anderson Phosphate & Oil Company, Frank Burbidge, president, and William J. McCormack, treasurer, of the said Etiwan Fertilizer Company, George Braden, president of the said Federal Chemical Company, of Delaware, and also of the said Federal Chemical Company, of Kentucky, Augustus D. Adair and James D. McCarty, officers and agents of the said Furman Farm Improvement Company and members of the said firm of A. D. Adair and McCarty Brothers, William DeC. Kessler, secretary and treasurer of the said Goulding Fertilizer Company, Limited, James G. Tinsley, president of the said Marietta Fertilizer Company and vice-president of the said Tennessee Chemical Company, William D. Rhea, general manager of the said National Fertilizer Company, William L. Peel, president of the said Old Dominion Guano Company, Abram C. Read, vice-president and general manager, and Isaac Mayo Read, agent, of the said Read Phosphate Company, Frank S. Royster, president, and Charles F. Bur-
24 roughs, vice-president, of the said F. S. Royster Guano Company, A. J. Ives, whose Christian name is to the said grand jurors unknown, secretary and treasurer of the said Savannah Guano Company and a member of the said firm of Wilcox, Ives & Company, T. Porter Fleming, vice-president of the said Southern States Phosphate and Fertilizer Company, and T. Garland Tinsley, president and treasurer of the said Tennessee Chemical Company, in their said several capacities as officers, managers, agents, and attorneys of the said corporation defendants and members of the said firms, and on behalf of those corporations and firms, during the period of time in this indictment first aforesaid, did carry on the business aforesaid; that in so carrying on the said business the said defendants, that is to say, the said corporation and individual defendants, did sell and deliver large quantities of the said merchandise within the limits of the said States of the conspiracy from the respective places of business of the said corporation defendants and the said firms, located at different points within those States, to retail dealers in and consumers of such merchandise, in such States respectively, and did also ship large quanti-es of the same from their respective places of business, located in the said States of the conspiracy and also in the States of Virginia, Illinois, and Kentucky, into and through other of the said States than those in which their said places of business were located; that in so carrying on the said busi-

ness and shipping the said merchandise from one of the said States into and through another or others thereof, the said defendants, during the period aforesaid, were engaged in trade and commerce among the States of this Union within the meaning of the Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in so carrying on the said business, trade and commerce, the said Virginia-Carolina Chemical Company and the said Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, and J. Rice Smith, agent and manager, of the said Virginia-Carolina Chemical Company, did make use of and operate a portion of their said business, trade and commerce through each of certain other corporations, to wit, the American Fertilizer Company, of Virginia, the Birmingham Fertilizer Company, of Alabama, the Coweta Fertilizer Company, of Georgia, the Georgia Chemical Works, of Georgia, the Navassa Guano Company, of North Carolina, of either the whole or a majority of the capital stock of which said corporations respectively the said Virginia-Carolina Chemical Company was the owner;

25 that in so carrying on the said business, trade and commerce, the said Armour and Company and the said Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, did make use of and operate all of their said business, trade and commerce through a certain other corporation called the Tuscarora Fertilizer Company, of New Jersey, and a certain trade name, to wit, the trade name of Armour Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Furman Farm Improvement Company and the said firm of A. D. Adair and McCarty Brothers did make use of and operate a portion of their said business trade, and commerce under the trade name of Chickamauga Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Federal Chemical Company, of Delaware, and the said Federal Chemical Company of Kentucky, did make use of, and operate a portion of their said business, trade and commerce through, the names of Century Phosphate Company, Fox Chemical Company, Branch Globe Fertilizer Company, Branch and Tennessee Phosphate Company; that in so carrying on the said business, trade and commerce, the said National Fertilizer Company did make use of, and operate a portion of its said business, trade and commerce through, the corporate name of American Guano Company and the trade name of Nashville Guano Company; that in so carrying on the said business, trade and commerce, the said Read Phosphate Company did make use of, and operate a portion of its said business, trade and commerce through the corporate name of Empire Guano Company; that in so carrying on the said business, trade and commerce, the said F. S. Royster Guano Company did make use of, and operate a portion of its said business, trade and commerce through the trade name of Atlantic Chemical Company and the corporate name of Columbia Guano Company; that in so carrying on the said business, trade and

commerce, the said Swift and Company did make use of, and operate the whole of its said business, trade and commerce through, the trade name of Swift Fertilizer Works; and that in so carrying on the said business, trade and commerce, the said Tennessee Chemical Company did make use of, and operate a portion of its said business, trade and commerce through, the trade name of Continental Fertilizer Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that of the total volume of such business, trade and commerce then so being carried on by the said defendants and their competitors, the said defendants together had and controlled the principal part, that is to say, ninety per centum thereof; and
26 that because the said corporation defendants and the said firms were in fact separate and distinct from each other, they should have conducted their interstate trade and commerce strictly in competition with each other, during the said period, and then would have so conducted the same but for the unlawful conspiracy in restraint of the said business, trade and commerce in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, at and within the said Middle District of Tennessee, in violation of the provisions of said section one of the said Act of Congress, unlawfully did knowingly engage in a conspiracy in restraint of the said business, trade and commerce, so then being carried on by them in the manner aforesaid, whereby the said business, trade and commerce was restrained in the several ways and by the several means now here set forth and described, that is to say:

Competition as to the prices at which the said merchandise was sold and delivered by the said corporation defendants and the said firms in the said States of the conspiracy, which before the period of time in this indictment first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was prevented and destroyed by the said defendant from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them styled "current, reasonable market prices," for the said merchandise so sold and delivered by the said corporation defendants and the said firms in those States, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so fixed and caused to be fixed; which said uniform and non-competitive prices were prices greatly in excess of the prices which but for the said unlawful conspiracy would at such times have prevailed for the said merchandise in the said business, trade and commerce, and were prices therefore unreasonable, and were a tax on the people of the said States of the said conspiracy amounting to a large sum of money, to wit, four million dollars, annually during the continuance of the same.

For and on account of such quantity of the said merchandise as was sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts allotted and caused

to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and
27 delivered in excess, was, by the corporation defendants and firms so selling and delivering the same, paid into a common fund, held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, compensated, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as sold and delivered less than the amounts so allotted to them respectively, so it was not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy that each of the said corporation defendants and of the said firms also paid into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment to be the absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm, in disposing of its said allotment in carrying on the said business, trade and commerce, on its part faithfully should exercise every reasonable effort and due business diligence to maintain the prices so fixed and caused to be fixed as aforesaid and pay into the said fund the sum accruing to the same on account of its said excess sales, in which case an equal amount was returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also made uniform and non-competitive as between all of the said corporation defendants and the said firms, in the said business, trade and commerce, among the said States of the conspiracy.

As a convenient intermediary and common agent between the said corporation defendants and the said firms, respectively and as a means of securing their co-operation in carrying out the said unlawful conspiracy, the said defendants made use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company, Limited, was also allowed and required to collect, hold, use and distribute the said fund
28 arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that, in pursuance of the said unlawful conspiracy,

and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of September, in the year nineteen hundred and three, during the period of time aforesaid, at and within the City of New York, in the State of New York, unlawfully did knowingly deposit with the Continental Trust Company, of the said City of New York, the sum of twenty-six thousand dollars, in connection with the purchase *of* by the said trust company on behalf of the said Virginia-Carolina Chemical Company, and in the name of one Montrose Stuart, a clerk in the office of the said trust company, of twenty-six hundred shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Samuel T. Morgan, on the seventh day of October, in the same year nineteen hundred and three, and during the period of time aforesaid, at and within the said city of New York, in the State of New York, unlawfully did deliver to the said William DeC. Kessler, Vice-President of the said Colonial Development Company, Limited, three checks drawn by the said Virginia-Carolina Chemical Company, one upon the National City Bank, of New York City aforesaid, for eighty thousand dollars, another on the Bank of America, of New York City aforesaid, for fifty thousand dollars, and the other on the National Park Bank, of New York City aforesaid, for thirty-five thousand and four hundred and sixty-eight dollars, aggregating one hundred and sixty-five thousand and four hundred and sixty-eight dollars, as and for a payment, by the said Virginia-Carolina Chemical Company, to the said Colonial Development Company, Limited, of twenty cents a ton on its allotment under the said unlawful conspiracy; he the said Samuel T. Morgan, when and where he so as aforesaid delivered the said checks to the said William DeC. Kessler, well knowing the character and purpose of the same, and well knowing that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as acts on their parts respectively of engaging in the same, the said Samuel T. Morgan,
29 Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, on the seventeenth day of September, in the year nineteen hundred and three, and during the period aforesaid, at the said City of New York, in the said State of New York, unlawfully did meet together to discuss and further the object of the said unlawful conspiracy; they the said Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred G. Brown,

Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, when and where they so as aforesaid met together, each well knowing the character and purpose of the said meeting, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank E. Wilcox, on the first day of November, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did deliver to one W. W. Perkins, Secretary of the said American Fertilizing Company, a certain document, too voluminous to be here set forth, stating certain prices and terms of sale, fixed in pursuance of the said unlawful conspiracy, for the said fetilizer merchandise, in the States of North Carolina, South Carolina, Georgia, Florida, Alabama and Tennessee, for the spring season of the year nineteen hundred and four; he the said Frank E. Wilcox at the time and place when and where he so as aforesaid delivered the said document to the said W. W. Perkins, well knowing the character of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, and during the period of time aforesaid, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, and during the period aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, and during the period of time aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at the City of Nashville, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, a certain notice of shipment, partly written and partly printed, in the words and figures following, that is to say:

"The Armour Fertilizer Works
Owned and operated by
Armour & Company.

Prudential Building,
Atlanta, Ga.

Duplicate.
To be Mailed with Bill of
Lading to Customer.

No. 612
March 10", 1905.

31 We have this day shipped from Nashville, Tenn. storage

To Bramlitt Hdw Co.
Corinth, Miss.

Charge to S. D. Bramlitt. Address same.

No. Bags.	Weight of bags.	Brand.	Tons.
400	100	King Cotton 8.2.2	20

Order No. 4613.

Bill of lading herewith. Invoice will be mailed from Chicago.
Above quantities shipped 3 10 1905. Freight Terms.....
Car No. 13619. Via L. & N.
Charges prepaid $48.00.

THE ARMOUR FERTILIZER WORKS,
Per ALEX. LESLIE."

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Austin B. Carpenter, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Assistant Secretary of the said Colonial Development Company, unlawfully did sign his name, to wit, "A. B. Carpenter, Asst. Secy." on the face of a certain stock certificate, to wit, certificate No 28, showing the ownership by one Thomas M. Green of fifty-one shares of the capital stock of the said Colonial Development Company; he the said Austin B. Carpenter, at the time and
32 place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his said act to be done in pursuance and to effect the object of the said conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles H. MacDowell, on the twelfth day of January, in the year nineteen hundred and five, and during the period of time aforesaid, at and within the city of Chicago, in the State of Illinois, unlawfully did sign his name, to-wit, "C. H. MacDowell," under the name of the Armour Fertilizer Works, and after the word "by" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Armour and Company, under the trade name of "Armour Fertilizer Works," offered to furnish and deliver at Corinth, in the State of Mississippi to one S. D. Bramlitt, twenty tons of the fertilizer merchandise aforesaid; he the said Charles H. MacDowell, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of gaging in the same, the said Alabama Chemical Company, on the the first day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the city of Wilmington, in the State of North Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of six hundred and twenty

dollars for sixty-two shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Alabama Chemical Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Montgomery, in the State of Alabama, unlawfully did knowingly deliver its certain check drawn upon the Merchants and Planters-Farley National Bank, Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of William DeC. Kessler, as payment for forty-two shares of the capital stock of the said Colonial Development Company, Limited;

33 And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Anderson Phosphate and Oil Company, on the twenty-ninth day of August, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Anderson, in the State of South Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of five hundred and eighty dollars for fifty-eight shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly buy from the Carolina Savings Bank, Charleston, South Carolina, a draft upon the Citizens National Bank, of New York City, for the payment of the sum of seven thousand nine hundred and forty-nine dollars and forty-three cents to the order of one Frank E. Taylor, Vice-President and General Manager of the said Ashepoo Fertilizer Company;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and *and* during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly cause the said Frank E. Taylor to endorse the check last above mentioned payable to the order of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Blackshear Manufacturing Company, on the seventeenth day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Blackshear, in the State of Georgia, unlawfully did knowingly deliver to the Atlantic Coast Line Railroad Company six tons of the fertilizer merchandise aforesaid, consigned and to be shipped

to the firm of E. J. Blume & Company, at Live Oak, in the State of Florida;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Etiwan Fertilizer Company, on the fourteenth day of December, in the year nineteen hundred and
34 three, and during the period of time aforesaid, at and within the town of Cairo, in the State of Georgia, by and through one P. H. Seabrook, its agent, unlawfully did knowingly offer and agree to furnish and deliver to the firm of Wight Brothers, of Cairo aforesaid, thirty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank Burbidge, on the first day of July, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Charleston, in the State of South Carolina, having then and there in his hands a certain check, dated the thirtieth day of June, in the same year nineteen hundred and four, drawn by the said Alabama Chemical Company upon the Continental National Bank of Chicago, for the payment of eleven hundred and forty-two dollars and ninety-seven cents to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Pay to order of People's National Bank, Colonial Development Co., Ltd., F. Burbidge, Pres."; he the said Frank Burbidge then and there, to wit, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William J. McCormack, on the ninth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, having then and there in his hands a certain check dated the fifth day of September, in the same year, drawn by the said New Orleans Acid & Fertilizer Company, upon the Louisiana National Bank of New Orleans, for the payment of seven hundred and fifty dollars to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Colonial Developm't Co., Frank Burbidge, Sec. & Treas., per Wm. J. McCormack"; he the said William J. McCormack, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of en-

gaging in the same, the said Federal Chemical Company, of
35 Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the said State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, and during the period of time aforesaid, at Springfield afore-
36 said, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff & Williams, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Goulding Fertilizer Company, Limited, on the twenty-fifth day of November, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the

town of Cullman, in the State of Alabama, by and through one W. E. Craig, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one John Sutterer, at Cullman aforesaid, three hundred and seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the sixth day of September, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Pensacola, in the State of Florida, having then and there in his hands a certain check, dated the fifth day of September, in the same year nineteen hundred and three, drawn by the said Alabama Chemical Company upon Merchandise Merchants and Planters-Farley National Bank of Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of W. DeC. Kessler, unlawfully did sign his name, to wit, "W. DeC. Kessler," upon the back of the said check next below the written words "Pay to the order of Colonial Development Co."; he the said William DeC. Kessler then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the back of the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the said fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Vice-President of the said Colonial Development Company, unlawfully did sign his name, to wit, "W. DeC. Kessler, V. P." on the face of the said stock certificate in the name of Thomas M. Green; he the said William DeC. Kessler, at the time and place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his act to be done in pursuance and to effect the object of
37 the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Gulfport Cotton Oil Fertilizer and Manufacturing Company, on the twenty-seventh day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-four hundred dollars for and in respect of twelve thousand tons of the fertilizer merchandise aforesaid, allotted to the said Gulfport Cotton Oil, Fertilizer and Manufacturing Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Home Mixture Guano Company, on a day in the year nineteen hundred and three to the said grand jurors

unknown, and during the period of time aforesaid, at and within the City of Columbus, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Jackson Fertilizer Company, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Jackson, in the State of Mississippi, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Marietta Fertilizer Company, on the twenty-first day of July, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by and through one L. W. Reeves, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one James A. Boyd, at Jonesboro aforesaid, seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said James G. Tinsley, on the
38 third day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Nashville, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley; he the said James G. Tinsley, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Meridian Fertilizer Factory, on the seventh day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Cullman, in the State of Alabama, by its agent E. L. Robbins, unlawfully did knowingly offer to furnish to C. A. Steifelmeyer one hundred and fifty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said National Fertilizer Company, on the

second day of March, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge; he the said William D. Rhea, then
39 and there, to wit, at the time and place when and where he so directed and required the said E. W. Connell to sign his name as aforesaid to the said check, well knowing the nature and contents of the said check, and that his said direction and requirement were in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid; he the said William D. Rhea then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the said document, well knowing the character of the same, and well knowing his said act to be one done in pursuance of and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said New Orleans Acid & Fertilizer Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did

knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars for seventy-five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Old Dominion Guano Company, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-six hundred and twenty dollars, for and in respect of thirteen thousand one hundred tons of the fertilizer merchandise aforesaid, allotted to the said Old Dominion Guano Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William L. Peel, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did sign his name, to wit, "W. L. Peel, Prest.," to a certain check, to wit, a check drawn by the Maddox-Rucker Banking Company upon the National Park Bank, New York, for the payment of twenty-six hundred and twenty dollars to the order of the said Colonial Development Company, Limited; he the said William L. Peel, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Planters Chemical Company, on the thirtieth day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Talladega, in the State of Alabama, unlawfully did knowingly pay the said Colonial Development Company, Limited, the sum of fifty dollars for five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Read Phosphate Company, on the fifth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Hartselle, in the State of Alabama, unlawfully did knowingly offer to sell and deliver to one S. E. Stewart, at that place, forty to fifty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and

three, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too
41 voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid; he the said Abram C. Read, then and there, to wit, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved, Nashville Tenn. Dec. 6 1904," and above the word "Manager," upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof, offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid; he the said Abram C. Read then and there, to wit, at the time and place when and where he so as aforesaid signed his name to the last mentioned document, well knowing the character and contents of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said F. S. Royster Guano Company, on the thirtieth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine thousand three hundred and fourteen dollars and seventy-four cents, on account of such merchandise sold and delivered by the said F. S. Royster Guano Company in excess of its allotment under the aforesaid unlawful conspiracy;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles F. Burroughs, on the twenty-fifth day of March, in the year nineteen hundred and four,
42 and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did sign

his name, to wit, "C. F. Burroughs," under the word "countersigned" and above the words "Vice-President" upon the face of a certain document, partly written and partly printed, too voluminous to be here set forth in full, wherein and whereby the said F. S. Royster Guano Company and he the said Charles F. Burroughs, as Vice-President thereof, offered to sell to one J. W. Carter, and to deliver to him at Maxton, in the State of North Carolina, ten tons of the fertilizer merchandise aforesaid; he the said Charles F. Burroughs, at the time and place when and where he so as aforesaid signed his name to the said document, well knowing the character and contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Savannah Guano Company, on the second day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did knowingly pay to the said Frank Burbidge the sum of nine hundred and forty dollars for ninety-four shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said A. J. Ives, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did sign his name, to wit, "A. J. Ives, Secty. & Treas." to a certain check, to wit, a check drawn by the Savannah Guano Company upon the Merchants National Bank, Savannah, Georgia, for the payment of three thousand one hundred and forty dollars to the order of New York Exchange; he the said A. J. Ives, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Southern States Phosphate and Fertilizer Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of the time afore-
43 said, at and within the City of Augusta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine hundred and sixty dollars for ninety-six shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Chemical and Oil Company, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the

town of Troy, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand dollars for and in respect of one-half of forty thousand tons of the fertilizer merchandise aforesaid allotted to the said Standard Chemical and Oil Company, as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Guano and Chemical Manufacturing Company, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand seven hundred and seventy-four dollars and seventy-seven cents as a partial payment for and in respect of the fertilizer merchandise aforesaid, allotted to the said Standard Guano and Chemical Manufacturing Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Swift & Company, on the first day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by its agent, J. Z. Elliott, unlawfully did knowingly offer to furnish to one W. P. Diehl thirty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

And that, further in pursuance of the said unlawful con-
44 spiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes & Bro., at Oxford, Alabama, a certain letter of the tenor following, to wit:

T. G. Tinsley, Pres't & Treas. Allen Hardison, Sec'y.

Tennessee Chemical Company, Manufacturers and Importers of Ox Fertilizers.

NASHVILLE, TENN., *May* 17–'05.

Messrs. D. P. Haynes & Bro., Oxford, Ala.

DEAR SIRS: I am in receipt of your favor of the 16th and beg to state we could not allow any discount further than the 5 % for cash

settlement. We will be glad to have you settle in cash on this basis if you desire to do so, but are sorry to state we are not in a position to offer you any further discount.

Yours truly, T. G. TINSLEY, *President;*

he the said T. Garland Tinsley then and there, to wit, at the time and place when and where he so as aforesaid caused the said letter to be written and sent as aforesaid, well knowing that the same was so written and sent in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part in engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Company, James G. Tinsley. By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee
45 Chemical Company upon the Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley; he the said T. Garland Tinsley, at the same time and place when and where he so as aforesaid wrote the said endorsement on the back of the said check, well knowing the contents of the same, and that his said act was done in pursuance of and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Valley Fertilizer Company, on the second day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Florence, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars, as a partial payment for and in respect of fertilizer merchandise, aforesaid, allotted to the said Tennessee Valley Fertilizer Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on their parts respectively, of engaging in the same, the said Frank Burbidge, Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson, during the period of time aforesaid, at the City of New York, in the State of New York, the City of Washington, in the District of Columbia, Old Point Comfort and Hot Springs, in the State of Virginia, St. Augustine, in the State of Florida, and French Lick Springs, in the State of Indiana, unlawfully did as officers, directors and attorney of the said Colonial Development Company, Limited,

meet together for the purpose of discussing and attending to the affairs of the said Colonial Development Company, Limited; they the said Frank Burbidge, Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson when and where they so met together aforesaid, well knowing the purpose of such meetings, and well knowing their acts in the premises to be acts in pursuance and to effect the object of the said unlawful conspiracy, and that the same were done as acts on their parts respectively of engaging in the said unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, during the period of time aforesaid, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form aforesaid, unlawfully did engage in a conspiracy in
46 restraint of trade and commerce among the several States;

Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

Second Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the first count described, and were so engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord, nineteen hundred and three at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the grand jurors unknown, and engage in a conspiracy, among themselves and with such other unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid; which said unlawful conspiracy in this count mentioned then and there was a conspiracy for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described; that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the

said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing and causing to be fixed, uniform and non-competitive prices, by them to be styled "current, rea-
47 sonable market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such times prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum ther-of during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be the absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its excess

sales, in which case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of pay-
48 ment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their co-operation in carrying out the said unlawful conspiracy, the said defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, and as being acts on the part of the said corporation and individual defendants respectively of engaging in that conspiracy, are now here in this count charged to be acts by the same corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned, and to have been acts on the part of the said corporation and individual defendants respectively of engaging in the last-named unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a con-
49 spiracy in restraint of trade and commerce among the several States; against the peace and dignity of the said United

States, and contrary to the form of the statute of the same in such case made and provided.

THIRD COUNT.

And the grand jurors, aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the said first count described, and so were engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the said United States, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the said United States, to wit, the offense of engaging in a combination, among themselves and with such other unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid, which said unlawful conspiracy in this count mentioned then and there was a conspiracy to engage in a combination for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described, that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them to be styled "current, reasonable market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be

prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such times prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful combination and ninety per centum thereof during the second year; it being a further element of the said unlawful combination in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on the said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the
51 same on account of its excess sales, in which case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their cooperation in carrying out the said unlawful combination, the said defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and

the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful combination; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, are now here in this count charged to be acts by the said corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy to commit an offense against the said United States: Against
52 the peace and dignity of the said United States; Against the peace and dignity of the said United States, and contrary to the form of the statute in such case made and provided.

FOURTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names

and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State, but by way of and partly through another State, and were severally engaged both in local com-
53 merce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the aforesaid business and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section one of the said Act of Congress, approved July 2, 1890, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, The Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company of Delaware, the Federal Chemical

Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count,

54 to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly engage in a conspiracy in restraint of commerce among the several States, to wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, whereby the said commerce was restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise which were maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the period of such unlawful conspiracy, and greatly in excess of those prices which would have otherwise prevailed in the said States during the period of such unlawful conspiracy, and were therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby earnest money was given to secure the maintenance of such prices and compensation was made to those losing volume of business by reason of maintaining such prices, that is to say:

There was from time to time allotted to each of said corporation defendants and firms an amount of tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms paid into a common fund the sum

of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sums becoming due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which faithfully maintained such uniform and non-competitive prices and failed to make sales
55 and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but sold and delivered through itself and its subsidiary companies a minimum amount thereof required as a guarantee of good faith, received from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid fell short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies made such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, as a penalty upon such excess sales, paid into such common fund like amounts per ton on the said respective kinds of fertilizers, divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means whereby said unlawful conspiracy was effected, a corporation of Ontario, Canada, whose stock was apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was the common fund aforesaid into which was paid the earnest money and penalties on excess sales aforesaid, and from which was paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which the same was operated and directed.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that within the period aforesaid of said unlawful conspiracy in this count of this indictment mentioned, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and did do and perform such acts as acts on their respective parts of engaging in the said unlawful conspiracy in this count of this indictment mentioned, and that each of such defendants at the time and place when and where such defendants did and performed the acts hereinafter so set forth in connection with such defendant respectively, then

and there well knew the character of such act and that such
56 act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, and as an act on the part of such defendant in engaging in the same, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year, nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the
57 object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chatta-
58 nooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the

County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit,
59 "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Ten-

nessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec. 6 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abraham C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P.
60 Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said corporation and individual defendants, during the period of time aforesaid, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

Fifth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the

first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and
61 through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the several States of the conspiracy and the said States of Virginia, Illinois and Kentucy, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commence against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, approved July 2, 1890, the said corporation defendants named in the said first count, to wit, the Virginia-Caro-
62 lina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, and engage in a conspiracy among themselves and with such other unknown corporations and persons, in restraint of commerce among the several States, to-wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, by which unlawful conspiracy said commerce was to be restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the

various points of delivery in the said States of the conspiracy,
63 which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy, and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices, that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to make sales and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose
64 treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary and

common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful conspiracy was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that such act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

65 In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one

Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said consiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company,
66 on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Ten-

nessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle
67 District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his, the said E. W. Connell's name as such Treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fer-

tilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read,"

68 after the words "Approved—Nashville, Tenn., Dec. 6 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he, the said Abram C. Read as Manager thereof offer-d to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee

Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

69 SIXTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were

severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress approved July 2, 1890, and entitled "An Act to protect
70 trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and in the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section 5440 of the Revised Statutes of the United States, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William
71 J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Wil-

liam D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the United States, to wit, to engage in a combination in restraint of commerce among the several States, namely, a combination in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, and did then and there so conspire to commit the aforesaid offense by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy, and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices; that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to
72 make sales and deliveries of such merchandise through itself and its subsidiary — amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment,

as aforesaid; and on the other hand, each of said corporation defendants and firms which, through itself and its subsidiary companies, should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful combination was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid, the corporation defendants and individual defendants, hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that such act was done in pur-
73 suance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and

four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at West
74 Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid,

consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchan-
75 dise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Arndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day

and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D.
76 Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec. 6 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes

and Bro.," at Oxford, Alabama, that certain letter of the date
77 set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley, By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did conspire to commit an offense against the United States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

ABRAM M. TILLMAN,
United States Attorney.

(Endorsed as follows:) No. 963. United States Circuit Court, Middle District of Tennessee. *The United States vs. Virginia-Carolina Chemical Company et als.*

Indictment for violating Act of Congress approved July 2, 1890, and entitled "An Act to Protect Trade and Commerce against unlawful restraints and monopolies," and Section 5440 R. S. U. S.

A True Bill. Robert Q. Stewart, Foreman of the Grand Jury.

Names of Witnesses Sworn and Examined Before the Grand Jury.

J. C. Adams, Henry E. Ahern, Lee Ashcraft, Eugene Atkinson, N. E. Barker, W. F. Barrett, James C. Beck, J. M. Berry, W. W. Bird, L. W. Botts, Clarence Braden, S. D. Bramlitt, A. P. Brantley,
B. D. Brantley, Dewitt Brown, H. C. Brown, Arthur Bussey,
78 Hezekiah Bussey, E. J. Blume, James A. Boyd, William F. Burns, Oscar Bright, J. W. Carter, B. G. Clark, C. W. Comes, E. W. Connell, Charles Earle Currie, R. L. Davis, Joseph Denee, W. P. Diehl, A. M. Dobbs, John V. Dobson, C. H. Drayton, W. L. Dumas, J. B. Duncan, S. Eastland, T. B. Edwards, Culpepper Exum, H. C. Fischer, J. B. Fiser, Albert French, C. A. Gambrill, A. H. George, John E. Gibbs, William Gilchrist, James M. Goldsmith, A. A. Green, E. P. Grice, W. A. Hansel, G. A. Harrington, H. J. Harby, Allen Hardison, L. C. Hayne, J. L. Haynes, D. P. Haynes, R. W. Henderson, P. W. Hendricks, E. R. Hodgson, junior, E. R. Hodgson, senior, J. L. Horn, W. E. Hudson, T. J. Hunt, R. H. John-

ston, T. V. Kessler, E. M. Kirk, Henry Kirn, H. L. Law, Alexander Leslie, J. A. Lindsey, W. Hampton Logan, Harry Luck, John A. Lewis, W. F. McKenzie, Robert F. Maddox, H. W. Malloy, E. R. Manning, H. L. Milligan, J. Allen Moore, M. B. Neece, W. J. Oliver, E. Thomas Orgain, D. B. Osborne, Every M. Paget, W. W. Perkins, Dr. J. D. Plunkett, F. B. Pope, William Price, Charles Rainey, Frederick Rayfield, Isaac W. Read, W. A. Reynolds, I. T. Rhea, W. E. Richards, H. A. Rogers, V. N. Roadstrum, W. G. Sadler, G. W. Sanders, E. M. Sentelle, W. McR. Smith, R. G. Sparrow, J. F. Stackley, C. A. Steifelmeyer, S. E. Stewart, W. B. Stratford, John Sutterer, E. R. Taber, Frank E. Taylor, W. B. Taylor, W. D. Tharin, J. R. Timmerman, J. W. Todd, S. W. Travers, George H. Tucker, E. Van Winkle, J. T. Welch, O. C. Wiley, C. H. Willcox, T. B. Williams, Benjamin L. Willingham, W. S. Wight, E. G. Woodling.

Filed 11:30 A. M., May 25, 1906. H. M. Doak, Clerk, by E. L. Doak, Deputy Clerk. Abram M. Tillman, U. S. Atty.

I, H. M. Doak, Clerk of the Circuit Court of the United States in and for the Middle District of Tennessee, hereby certify that the foregoing is a true, perfect, and complete copy of an indictment filed as thereupon endorsed, etc. In witness whereof I have hereunto signed my name and affixed the seal of said court, at my office, this the 26th day of May, 1906.

[SEAL OF COURT.] H. M. DOAK, *Clerk.*

79 *Order Awarding Writs of Habeas Corpus and Certiorari.*

Filed July 14th, 1906.

In the Matter of the Petition of GEORGE BRADEN for Writs of *Habeas Corpus* and Certiorari.

GEORGE BRADEN, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

Let the writ of *habeas corpus*, in due form of law, as prayed for in the within petition be issued directed to Morgan Treat, United States Marshal for the Eastern District of Virginia, commanding him forthwith to make return of said writ and to produce the body of said petitioner, George Braden, before this Court, to be dealt with according to law; and that the writ of certiorari as prayed for in said petition be issued and made returnable forthwith.

Richmond, Va., July 14th, 1906.

NATHAN GOFF,
Presiding Circuit Judge, April Term, 1906.

Writ of Habeas Corpus.

80 UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

To Morgan Treat, United States Marshal for the Eastern District of Virginia, or any of his deputies:

We command you that the body of George Braden in your custody detained, as it is said, together with the day and cause of his caption and detention, you safely have before our Circuit Court of the United States, within and for the District aforesaid, forthwith, to do and receive all and singular those things which the said Circuit Court of the United States, within and for the District aforesaid, shall then and there consider of him in this behalf; and have you then and there this writ.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond, this 14th day of July, in the year of our Lord one thousand nine hundred and six, and of our Independence the 131st year.

[Seal United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Cerk of the Circuit Court of the United States for the Eastern District of Virginia.

Marshal's Return.

To the Circuit Court of the United States for the Eastern District of Virginia:

Morgan Treat, United States Marshal for the said Eastern District of Virginia, to whom the annexed writ is directed, has now before the court the body of George Braden therein named, as thereby commanded. And I certify that the cause of the detention of the said George Braden is a warrant directed to me and issued by the Honorable Edmund Waddill, Jr., Judge, of the said Eastern
81 District of Virginia, on July 14, 1906, under the provisions of section 1014 of the Revised Statutes of the United States, commanding the imprisonment and removal of the said George Braden to the Middle District of Tennessee for trial in the Circuit Court of the United States for said last mentioned district upon a certain indictment found in said last mentioned court against him, the said George Braden and others, a copy of which warrant of removal is set out in the petition of the said George Braden herein; and that a full, true and correct statement of all the proceedings before the said Judge upon the application for the arrest and commitment of the said George Braden and his removal to said Middle District of Tennessee for trial is contained and set forth in the statement or order of said Judge, a copy of which is set forth in section 7 of the said George Braden's petition and in the documents made a part thereof and therein referred to.

Dated this 14th day of July, A. D. 1906.

MORGAN TREAT,
U. S. Marshal for the Eastern District of Virginia.

Writ of Certiorari.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

The President of the United States of America to the Judge of the District Court of the United States for the Eastern District of Virginia:

82 We being informed that there is now pending before you a suit in which the United States of America is plaintiff and George Braden is defendant; and we being willing, for certain reasons, that the said case and the record and proceedings therein should be certified by the Judge of the District Court of the United States for the Eastern District of Virginia and removed into the Circuit Court of the United States for the Eastern District of Virginia, sitting at Richmond, Virginia;

We do hereby command you forthwith that you send forthwith to the said Circuit Court of the United States for the Eastern District of Virginia, as aforesaid, the record and proceedings in said case, so that the said Circuit Court of the United States for the Eastern District of Virginia may act thereon as of right and according to law ought to be done.

Witness, The Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond, this 14th day of July, in the year of our Lord one thousand nine hundred and six, and of our Independence the 131st year.

[Seal United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Return of United States District Judge.

The Clerk of the United States District Court is hereby directed to deliver to the Judges of the United States Circuit Court within and for the Eastern District of Virginia the record and proceedings mentioned in the within writ.

Richmond, Va., July 14", 1906.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

83 *Transcript of Proceedings Before Honorable Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia.*

The following proceedings were had before Honorable Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia, at Richmond, Virginia, on the 14th day of July, 1906.

THE UNITED STATES
versus
GEORGE BRADEN.

Writ of Certiorari.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

The President of the United States of America to the Judge of the District Court of the United States for the Eastern District of Virginia:

We being informed that there is now pending before you a suit in which the United States of America in plaintiff and George Braden is defendant; and we being willing, for certain rea-
84 sons, that the said case and the record and proceedings therein should be certified by the Judge of the District Court of the United States for the Eastern District of Virginia and removed into the Circuit Court of the United States for the Eastern District of Virginia, sitting at Richmond, Virginia.

We do hereby command you forthwith that you send forthwith to the said Circuit Court of the United States for the Eastern District of Virginia, as aforesaid, the record and proceedings in said case, so that the said Circuit Court of the United States for the Eastern District of Virginia may act thereon as of right and according to law ought to be done.

Witness, The Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond, this 14th day of July, in the year of our Lord one thousand nine hundred and six, and of our Independence the 131st year.

[Seal of United States Circuit Court.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Return of United States District Judge.

The Clerk of the United States District Court is hereby directed to deliver to the Judges of the United States Circuit Court within and for the Eastern District of Virginia the record and proceedings mentioned in the within writ.

Richmond, Va., July 14th, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge.

85 *Complaint.*

Filed July 14th, 1906.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

On this 14th day of July, A. D. 1906, at the City of Richmond, in the said District, before the Hon. Edmund Waddill, Jr., Judge

of the District Court of the United States of America for the said District, comes Morgan Treat, United States Marshal in and for the said District, and upon his oath complains and says: that he has good cause to believe and does firmly believe that George Braden, stands indicted by the Grand Jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said George Braden on the eighth day of July in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, being during said period President of the Federal Chemical Companies, corporations existing under and by the laws of the States of Delaware & Kentucky did in the said Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said George Braden did unlawfully conspire with divers other persons and
86 corporations to commit an offense against the United States, to-wit, the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States, all as more fully set out in an indictment filed in the said Circuit Court of the United States in and for the Middle District of Tennessee on May 25, 1906, in cause No. 963, entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," a certified copy of which indictment is hereto attached and made a part of this complaint; and complainant therefore charges that the said George Braden did commit the said offenses against the United States in manner and form as set forth in said indictment.

Complainant furthermore avers upon information and belief that said George Braden is now believed to be within the Eastern District of Virginia.

Wherefore this complainant prays that the said George Braden may be arrested and imprisoned and removed or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee, and further dealt with according to law.

MORGAN TREAT, *Marshal.*

Subscribed and sworn to before me by the above named Morgan Treat the day and year first above written.

Richmond, Va., July 14, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge.

87 *Certified Copy of Indictment.*

In the Circuit Court of the United States of America for the Middle District of Tennessee, of the April Term, in the Year of Our Lord Nineteen Hundred and Six.

MIDDLE DISTRICT OF TENNESSEE, *sct:*

The grand jurors for the United States of America, inquiring for the Middle District of Tennessee, upon their oath present, that before and on the eighth day of July, in the year of our Lord nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year of our Lord nineteen hundred and five, the following named corporations, respectively organized and existing under and authorized by the laws of the several States and of the foreign country here named in connection with them, and hereafter in this indictment called corporation defendants, to wit, the Virginia-Carolina Chemical Company, of New Jersey, Armour and Company, of Illinois, the Acme Manufacturing Company, of North Carolina, the Alabama Chemical Company, of New Jersey, the Anderson Phosphate & Oil Company, of South Carolina, the Ashepoo Fertilizer Company, of South Carolina, the Blackshear Manufacturing Company, of Georgia, the Etiwan Fertilizer Company, of South Carolina, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, The Furman Farm Improvement Company, of Georgia, the Goulding Fertilizer Company, Limited, of Great Britain and Ireland, The Goulding Fertilizer Company, of Florida, the Gulfport Cotton Oil, Fertilizer & Manufacturing Company, of Georgia, the Home Mixture Guano Company, of Georgia, the Jackson Fertilizer Company, of Mississippi, the Marietta Fertilizer Company, of Georgia, the Meridian Fertilizer Factory, of Mississippi, the National Fertilizer Company, of Tennessee, the New Orleans Acid and Fertilizer Company, of New Jersey, the Old Dominion Guano Company, of Georgia, the Planters Chemical Company, of Alabama, the Read Phosphate Com-
88 pany, of West Virginia, the F. S. Royster Guano Company, of Virginia, the Savannah Guano Company, of Georgia, the Southern States Phosphate and Fertilizer Company, of Georgia, the Standard Chemical & Oil Company, of Alabama, the Standard Guano and Chemical Manufacturing Company, of Louisiana, Swift & Company, of Illinois, the Tennessee Chemical Company, of Tennessee, and the Tennessee Valley Fertilizer Company, of Alabama, and certain firms, to wit, the firm of A. D. Adair and McCarty Brothers and the firm of Wilcox, Ives & Company, did carry on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereafter in this indictment called the States of the conspiracy, as wholesale dealers in complete and alkaline fertilizers and in acid phosphates, nitrates, and potash salts suitable for fertilizers, which then were useful and valuable articles of merchandise, indispensable for use on the soil of the said States of the conspiracy in order that the staple

operations of those States might be raised therefrom: that the following named persons, hereafter in this indictment called individual defendants, to wit, Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, of the said Virginia-Carolina Chemical Company, and J. Rice Smith, agent and manager of the said Virginia-Carolina Chemical Company, and president of the Georgia Chemical Works hereinafter mentioned, Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, Fred G. Brown, president and treasurer of the said Anderson Phosphate & Oil Company, Frank Burbidge, president, and William J. McCormack, treasurer of the said Etiwan Fertilizer Company, George Braden, president of the said Federal Chemical Company, of Delaware, and also of the said Federal Chemical Company, of Kentucky, Augustus D. Adair and James D. McCarty, officers and agents of the said Furman Farm Improvement Company and members of the said firm of A. D. Adair and McCarty Brothers, William DeC. Kessler, secretary and treasurer of the said Goulding Fertilizer Company, Limited, James G. Tinsley, president of the said Marietta Fertilizer Company and vice-president of the said Tennessee Chemical Company, William D. Rhea, general manager of the said National Fertilizer Company, William L. Peel, president of the said Old Dominion Guano Company, Abram C. Read, vice-president and general manager, and Isaac Mayo Read, agent, of the said Read Phosphate Company,

89 Frank S. Royster, president, and Charles F. Burroughs, vice-president, of the said F. S. Royster Guano Company, A. J. Ives, whose Christian name is to the said grand jurors unknown, secretary and treasurer of the said Savannah Guano Company and a member of the said firm of Wilcox, Ives & Company, T. Porter Fleming, vice-president of the said Southern States Phosphate and Fertilizer Company, and T. Garland Tinsley, president and treasurer of the said Tennessee Chemical Company, in their said several capacities as officers, managers, agents, and attorneys of the said corporation defendants and members of the said firms, and on behalf of those corporations and firms, during the period of time in this indictment first aforesaid, did carry on the business aforesaid; that in so carrying on the said business the said defendants, that is to say, the said corporation and individual defendants, did sell and deliver large quantities of the said merchandise within the limits of the said States of the conspiracy from the respective places of business of the said corporation defendants and the said firms, located at different points within those States, to retail dealers in and consumers of such merchandise, in such States respectively, and did also ship large quan-tities of the same from their respective places of business, located in the said States of the conspiracy and also in the States of Virginia, Illinois, and Kentucky, into and through other of the said States than those in which their said places of business were located; that in so carrying on the said business and shipping the said merchandise from one of the said States into and through another or others thereof, the said defendants, during the period

aforesaid, were engaged in trade and commerce among the States of this Union within the meaning of the Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in so carrying on the said business, trade and commerce, the said Virginia-Carolina Chemical Company and the said Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, and J. Rice Smith, agent and manager, of the said Virginia-Carolina Chemical Company, did make use of and operate a portion of their said business, trade and commerce through each of certain other corporations, to wit, the American Fertilizing Company, of Virginia, the Birmingham Fertilizer Company, of Alabama, the Coweta Fertilizer Company of Georgia, the Georgia Chemical Works, of Georgia, the Navassa Guano Company, of North Carolina, of either the whole or a majority of the capital stock of which said corporations respectively the said Virginia-Carolina Chemical Company was the owner; that in so carrying on the said business, trade and commerce, the said Armour and Company and the said Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, did make use of and operate all of their said business, trade and commerce through a certain other corporation called the Tuscarora Fertilizer Company, of New Jersey, and a certain trade name, to wit, the trade name of Armour Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Furman Farm Improvement Company and the said firm of A. D. Adair and McCarty Brothers did make use of and operate a portion of their said business trade, and commerce under the trade name of Chickamauga Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Federal Chemical Company, of Delaware, and the said Federal Chemical Company of Kentucky, did make use of, and operate a portion of their said business, trade and commerce through, the names of Century Phosphate Company, Fox Chemical Company, Branch, Globe Fertilizer Company, Branch, and Tennessee Phosphate Company; that in so carrying on the said business, trade and commerce, the said National Fertilizer Company did make use of, and operate a portion of its said business, trade and commerce through, the corporate name of American Guano Company and the trade name of Nashville Guano Company; that in so carrying on the said business, trade and commerce, the said Read Phosphate Company did make use of, and operate a portion of its said business, trade and commerce through the corporate name of Empire Guano Company; that in so carrying on the said business, trade and commerce, the said F. S. Royster Guano Company did make use of, and operate a portion of its said business, trade and commerce through the trade name of Atlantic Chemical Company and the corporate name of Columbia Guano Company; that in so carrying on the said business, trade and commerce, the said Swift and Company did make

use of, and operate the whole of its said business, trade and commerce through the trade name of Swift Fertilizer Works; and that in so carrying on the said business, trade and commerce, the said Tennessee Chemical Company did make use of, and operate a portion of its said business, trade and commerce through, the trade name of Continental Fertilizer Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that of the total volume of such business, trade and commerce then so being carried on by the said defendants and their competitors, the said defendants together had and controlled
91 the principal part, that is to say, ninety per centum thereof; and that because the said corporation defendants and the said firms were in fact separate and distinct from each other, they should have conducted their interstate trade and commerce strictly in competition with each other, during the said period, and then would have so conducted the same but for the unlawful conspiracy in restraint of the said business, trade and commerce in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, at and within the said Middle District of Tennessee, in violation of the provisions of said section one of the said Act of Congress, unlawfully did knowingly engage in a conspiracy in restraint of the said business, trade and commerce, so then being carried on by them in the manner aforesaid, whereby the said business, trade and commerce was restrained in the several ways and by the several means now here set forth and described, that is to say:

Competition as to the prices at which the said merchandise was sold and delivered by the said corporation defendants and the said firms in the said States of the conspiracy, which before the period of time in this indictment first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was prevented and destroyed by the said defendant from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them styled "current, reasonable market prices," for the said merchandise so sold and delivered by the said corporation defendants and the said firms in those States, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so fixed and caused to be fixed; which said uniform and non-competitive prices were prices greatly in excess of the prices which but for the said unlawful conspiracy would at such times have prevailed for the said merchandise in the said business, trade and commerce, and were prices therefore unreasonable, and were a tax on the people of the said States of the said conspiracy amounting to a large sum of money, to wit, four million dollars, annually during the continuance of the same.

For and on account of such quantity of the said merchandise as was sold and delivered as aforesaid by any of such corporation de-

fendants or of such firms, in excess of amounts allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and de-
92 livered in excess, was, by the corporation defendants and firms so selling and delivering the same, paid into a common fund, held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, compensated, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as sold and delivered less than the amounts so allotted to them respectively, so it was not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy that each of the said corporation defendants and of the said firms also paid into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be the absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm, in disposing of its said allotment in carrying on the said business, trade and commerce, on its part faithfully should exercise every reasonable effort and due business diligence to maintain the prices so fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its said excess sales, in which case an equal amount was returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also made uniform and non-competitive as between all of the said corporation defendants and the said firms, in the said business, trade and commerce, among the said States of the conspiracy.

As a convenient intermediary and common agent between the said corporation defendants and the said firms, respectively and as a means of securing their co-operation in carrying out the said unlawful conspiracy, the said defendants made use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company, Limited, was also allowed and required to collect, hold, use and distribute the said fund aris-
93 ing from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company on the twenty-third day of September, in the year nineteen hundred and three, during the period of time aforesaid, at and within the City of New York, in the State of New York, unlawfully did knowingly, deposit with the Continental Trust Company, of the said City of New York, the sum of twenty-six thousand dollars, in connection with the purchase of by the said trust company on behalf of the said Virginia-Carolina Chemical Company, and in the name of one Montrose Stuart, a clerk in the office of the said trust company, of twenty-six hundred shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Samuel T. Morgan, on the seventh day of October, in the same year nineteen hundred and three, and during the period of time aforesaid, at and within the said city of New York, in the State of New York, unlawfully did deliver to the said William DeC. Kessler, Vice-President of the said Colonial Development Company, Limited, three checks drawn by the said Virginia-Carolina Chemical Company, one upon the National City Bank, of New York City aforesaid, for eighty thousand dollars, another on the Bank of America, of New York City aforesaid, for fifty thousand dollars, and the other on the National Park Bank, of New York City aforesaid, for thirty-five thousand and four hundred and sixty-eight dollars, aggregating one hundred and sixty-five thousand and four hundred and sixty-eight dollars, as and for a payment, by the said Virginia-Carolina Chemical Company, to the said Colonial Development Company, Limited, of twenty cents a ton on its allotment under the said unlawful conspiracy; he the said Samuel T. Morgan, when and where he so as aforesaid delivered the said checks to the said William DeC. Kessler, well knowing the character and purpose of the same, and well knowing that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as acts on their parts respectively of engaging in the same, the said Samuel T. Morgan,
Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox,
94 J. Rice Smith, Austin B. Carpenter, Charles G. Wilson,
Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, on the seventeenth day of September, in the year nineteen hundred and three, and during the period aforesaid, at the said City of New York, in the said State of New York, unlawfully did meet together to discuss and further the object of the said unlawful conspiracy; they the said Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy,

Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, when and where they so as aforesaid met together, each well knowing the character and purpose of the said meeting, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank E. Wilcox, on the first day of November, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did deliver to one W. W. Perkins, Secretary of the said American Fertilizing Company, a certain document, too voluminous to be here set forth, stating certain prices and terms of sale, fixed in pursuance of the said unlawful conspiracy, for the said fertilizer merchandise, in the States of North Carolina, South Carolina, Georgia, Florida, Alabama and Tennessee, for the spring season of the year nineteen hundred and four; he the said Frank E. Wilcox at the time and place when and where he so as aforesaid delivered the said document to the said W. W. Perkins, well knowing the character of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, and during the period of time aforesaid, at the town of Decherd, in the said Middle District of Tennessee, by and through one
95 F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, and during the period aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to

furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, and during the period of time aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at the City of Nashville, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, a certain notice of shipment, partly written and partly printed, in the words and figures following, that is to say:

"The Armour Fertilizer Works
Owned and operated by
Armour & Company.

Prudential Building,
Atlanta, Ga.

Duplicate.
To be Mailed with Bill of
Lading to Customer.

No. 612
March 10", 1905.

96 We have ths day shipped from Nashville, Tenn. storage
To Bramlitt Hlw Co.
Corinth, Miss.
Charge to S. D. Bramitt. Address same.

No. Bags.	Weight of bags.	Brand	Tons.
400	100	King Cotton 8.2.2	20

Order No. 4613.
Bill of lading herewith. Invoice will be mailed from Chicago.
Above quantities shipped 3 10 1905. Freight Terms.....
Car No. 13619. Via L. & N.
Charges prepaid $48.00.
THE ARMOUR FERTILIZER WORKS,
Per ALEX. LESLIE."

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisvile and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the

said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Austin B. Carpenter, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Assistant Secretary of the said Colonial Development Company, unlawfully did sign his name, to wit, "A. B. Carpenter, Ass't Sec'y" on the face of a certain stock certificate, to wit, certificate No. 28, showing the ownership by one Thomas M. Green of fifty-one shares of the capital stock of the said Colonial Development Company; he the said Austin B. Carpenter, at the time and
97 place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his said act to be done in pursuance and to effect the object of the said conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles H. MacDowell, on the twelfth day of January, in the year nineteen hundred and five, and during the period of time aforesaid, at and within the city of Chicago, in the State of Illinois, unlawfully did sign his name, to-wit, "C. H. MacDowell," under the name of the Armour Fertilizer Works, and after the word "by" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Armour and Company, under the trade name of "Armour Fertilizer Works," offered to furnish and deliver at Corinth, in the State of Mississippi to one S. D. Bramlitt, twenty tons of the fertilizer merchandise aforesaid; he the said Charles H. MacDowell, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Acme Manufacturing Company, on the first day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the city of Wil-

mington, in the State of North Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of six hundred and twenty dollars for sixty-two shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Alabama Chemical Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Montgomery, in the State of Alabama, unlawfully did knowingly deliver its certain check drawn upon the Merchants and Planters-Farley National Bank, Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of William DeC. Kessler, as payment for forty-two shares of the capital stock of the said Colonial Development Company, Limited;

98 And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Anderson Phosphate and Oil Company, on the twenty-ninth day of August, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Anderson, in the State of South Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of five hundred and eighty dollars for fifty-eight shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly buy from the Carolina Savings Bank, Charleston, South Carolina, a draft upon the Citizens National Bank, of New York City, for the payment of the sum of seven thousand nine hundred and forty-nine dollars and forty-three cents to the order of one Frank E. Taylor, Vice-President and General Manager of the said Ashepoo Fertilizer Company;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and *and* during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly cause the said Frank E. Taylor to endorse the check last above mentioned payable to the order of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Blackshear Manufacturing Company, on the seventeenth day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Blackshear, in the State of Georgia, unlawfully did know-

ingly deliver to the Atlantic Coast Line Railroad Company six tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of E. J. Blume & Company, at Live Oak, in the State of Florida;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Etiwan Fertilizer Company, on the fourteenth day of December, in the year nineteen hundred
99 and three, and during the period of time aforesaid, at and within the town of Cairo, in the State of Georgia, by and through one P. H. Seabrook, its agent, unlawfully did knowingly offer and agree to furnish and deliver to the firm of Wight Brothers, of Cairo aforesaid, thirty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank Burbidge, on the first day of July, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Charleston, in the State of South Carolina, having then and there in his hands a certain check, dated the thirtieth day of June, in the same year nineteen hundred and four, drawn by the said Alabama Chemical Company upon the Continental National Bank of Chicago, for the payment of eleven hundred and forty-two dollars and ninety-seven cents to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Pay to order of People's National Bank, Colonial Development Co., Ltd., F. Burbidge, Pres."; he the said Frank Burbidge then and there, to wit, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William J. McCormack, on the ninth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, having then and there in his hands a certain check dated the fifth day of September, in the same year, drawn by the said New Orleans Acid & Fertilizer Company, upon the Louisiana National Bank of New Orleans, for the payment of seven hundred and fifty dollars to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Colonial Developm't Co., Frank Burbidge, Sec. & Treas., per Wm. J. McCormack"; he the said William J. McCormack, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy,

and to effect the object of the same, and as an act on its part of engaging in the same, the said Federal Chemical Company, of
100 Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the said State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, and during the period of time aforesaid, at Springfield afore-
101 said, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff & Williams, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Goulding Fertilizer Company, Limited, on the twenty-fifth day of November, in the year nineteen

hundred and three, and during the period of time aforesaid, at and within the town of Cullman, in the State of Alabama, by and through one W. E. Craig, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one John Sutterer, at Cullman aforesaid, three hundred and seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the sixth day of September, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Pensacola, in the State of Florida, having then and there in his hands a certain check, dated the fifth day of September, in the same year nineteen hundred and three, drawn by the said Alabama Chemical Company upon Merchandise Merchants and Planters-Farley National Bank of Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of W. DeC. Kessler, unlawfully did sign his name, to wit, "W. DeC. Kessler," upon the back of the said check next below the written words "Pay to the order of Colonial Development Co."; he the said William DeC. Kessler then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the back of the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the said fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Vice-President of the said Colonial Development Company, unlawfully did sign his name, to wit, "W. DeC. Kessler, V. P." on the face of the said stock certificate in the name of Thomas M. Green; he the said William DeC. Kessler, at the time and place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his act to be done in pursuance and to effect the object
102 of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Gulfport Cotton Oil Fertilizer and Manufacturing Company, on the twenty-seventh day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-four hundred dollars for and in respect of twelve thousand tons of the fertilizer merchandise aforesaid, allotted to the said Gulfport Cotton Oil, Fertilizer and Manufacturing Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy,

and to effect the object of the same, and as an act on its part of engaging in the same, the said Home Mixture Guano Company, on a day in the year nineteen hundred and three to the said grand jurors unknown, and during the period of time aforesaid, at and within the City of Columbus, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Jackson Fertilizer Company, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Jackson, in the State of Mississippi, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Marietta Fertilizer Company, on the twenty-first day of July, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by and through one L. W. Reeves, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one James A. Boyd, at Jonesboro aforesaid, seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said James G. Tinsley, on the third
103 day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Nashville, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley; he the said James G. Tinsley, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Meridian Fertilizer Factory, on the seventh day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Cullman, in the State of Alabama, by its agent E. L. Robbins, un-

lawfully did knowingly offer to furnish to C. A. Steifelmeyer one hundred and fifty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge; he the said
104 William D. Rhea, then and there, to wit, at the time and place when and where he so directed and required the said E. W. Connell to sign his name as aforesaid to the said check, well knowing the nature and contents of the said check, and that his said direction and requirement were in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid; he the said William D. Rhea then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the said document, well knowing the character of the same, and well knowing his said act to be one done in pursuance of and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said New Orleans Acid & Fertilizer Company, on

the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars for seventy-five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Old Dominion Guano Company, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-six hundred and twenty dollars, for and in respect of
105 thirteen thousand one hundred tons of the fertilizer merchandise aforesaid, allotted to the said Old Dominion Guano Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William L. Peel, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did sign his name, to wit, "W. L. Peel, Prest.," to a certain check, to wit, a check drawn by the Maddox-Rucker Banking Company upon the National Park Bank, New York, for the payment of twenty-six hundred and twenty dollars to the order of the said Colonial Development Company, Limited; he the said William L. Peel, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Planters Chemical Company, on the thirtieth day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Talladega, in the State of Alabama, unlawfully did knowingly pay the said Colonial Development Company, Limited, the sum of fifty dollars for five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Read Phosphate Company, on the fifth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Hartselle, in the State of Alabama, unlawfully did knowingly offer to sell and deliver to one S. E. Stewart, at that place, forty to fifty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of en-

gaging in the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here
106 set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid; he the said Abram C. Read, then and there, to wit, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved, Nashville, Tenn. Dec. 6, 1904," and above the word "Manager," upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof, offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid; he the said Abram C. Read then and there, to wit, at the time and place when and where he so as aforesaid signed his name to the last mentioned document, well knowing the character and contents of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said F. S. Royster Guano Company, on the thirtieth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine thousand three hundred and fourteen dollars and seventy-four cents, on account of such merchandise sold and delivered by the said F. S. Royster Guano Company in excess of its allotment under the aforesaid unlawful conspiracy;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles F. Burroughs, on the
107 twenty-fifth day of March, in the year nineteen hundred and four, and during the period of time aforesaid, at and within

the City of Norfolk, in the State of Virginia, unlawfully did sign his name, to wit, "C. F. Burroughs," under the word "countersigned" and above the words "Vice-President" upon the face of a certain document, partly written and partly printed, too voluminous to be here set forth in full, wherein and whereby the said F. S. Royster Guano Company and he the said Charles F. Burroughs, as Vice-President thereof, offered to sell to one J. W. Carter, and to deliver to him at Maxton, in the State of North Carolina, ten tons of the fertilizer merchandise aforesaid; he the said Charles F. Burroughs, at the time and place when and where he so as aforesaid signed his name to the said document, well knowing the character and contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Savannah Guano Company, on the second day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did knowingly pay to the said Frank Burbidge the sum of nine hundred and forty dollars for ninety-four shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said A. J. Ives, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did sign his name, to wit, "A. J. Ives, Secty. & Treas." to a certain check, to wit, a check drawn by the Savannah Guano Company upon the Merchants National Bank, Savannah, Georgia, for the payment of three thousand one hundred and forty dollars to the order of New York Exchange; he the said A. J. Ives, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further n pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Southern States Phosphate and Fertilizer Company, on the fifth day of September, in the year nineteen
108 hundred and three, and during the period of the time aforesaid, at and within the City of Augusta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine hundred and sixty dollars for ninety-six shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Chemical and Oil Company, on the third day of October, in the year nineteen hundred and three,

and during the period of time aforesaid, at and within the Town of Troy, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand dollars for and in respect of one-half of forty thousand tons of the fertilizer merchandise aforesaid allotted to the said Standard Chemical and Oil Company, as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Guano and Chemical Manufacturing Company, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand seven hundred and seventy-four dollars and seventy-seven cents as a partial payment for and in respect of the fertilizer merchandise aforesaid, allotted to the said Standard Guano and Chemical Manufacturing Company, as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Swift & Company, on the first day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by its agent, J. Z. Elliott, unlawfully did knowingly offer to furnish to one W. P. Diehl thirty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

And that, further in pursuance of the said unlawful con-
109 spiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes & Bro., at Oxford, Alabama, a certain letter of the tenor following, to wit:

T. G. Tinsley, Pres't & Treas. Allen Hardison, Sec'y.

Tennessee Chemical Company, Manufacturers and Importers of Ox Fertilizers.

NASHVILLE, TENNESSEE, *May* 17, '05.

Messrs. D. P. Haynes & Bro., Oxford, Ala.

DEAR SIRS:—I am in receipt of your favor of the 16th and beg to state we could not allow any discount further than the 5% for cash settlement. We will be glad to have you settle in cash on this basis if you desire to do so, but are sorry to state we are not in a position to offer you any further discount.

Yours truly, T. G. TINSLEY, *President;*

he the said T. Garland Tinsley then and there, to wit, at the time and place when and where he so as aforesaid caused the said letter to be written and sent as aforesaid, well knowing that the same was so written and sent in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part in engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Company, James G. Tinsley. By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon the Mercantile National Bank, New York, for the payment of
110 sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley; he the said T. Garland Tinsley, at the same time and place when and where he so as aforesaid wrote the said endorsement on the back of the said check, well knowing the contents of the same, and that his said act was done in pursuance of and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Valley Fertilizer Company, on the second day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Florence, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars, as a partial payment for and in respect of fertilizer merchandise aforesaid, allotted to the said Tennessee Valley Fertilizer Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on their parts respectively, of engaging in the same, the said Frank Burbidge,

Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson, during the period of time aforesaid, at the City of New York, in the State of New York, the City of Washington, in the District of Columbia, Old Point Comfort and Hot Springs, in the State of Virginia, St. Augustine, in the State of Florida, and French Lick Springs, in the State of Indiana, unlawfully did as officers, directors and attorney of the said Colonial Development Company, Limited, meet together for the purpose of discussing and attending to the affairs of the said Colonial Development Company, Limited; they the said Frank Burbidge, Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson when and where they so met together aforesaid, well knowing the purpose of such meetings, and well knowing their acts in the premises to be acts in pursuance and to effect the object of the said unlawful conspiracy, and that the same were done as acts on their parts respectively of engaging in the said unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, during the period of time aforesaid, and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form aforesaid, unlawfully did engage in a conspiracy in restraint of trade and commerce among the several States; Against the
111 peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

SECOND COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the first count described, and were so engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord, nineteen hundred and three at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the grand jurors unknown, and engage in a conspiracy, among themselves and with such other

unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid; which said unlawful conspiracy in this count mentioned then and there was a conspiracy for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described; that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing and causing to be fixed, uniform and non-competitive prices, by them to be styled "current, reason-
112 able market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such times prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum ther-of during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be the

absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on the said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its excess sales, in which case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of pay-
113 ment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their co-operation in carrying out the said unlawful conspiracy, the said defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, and as being acts on the part of the said corporation and individual defendants respectively of engaging in that conspiracy, are now here in this count charged to be acts by the same corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned, and to have been acts on the part of the said corporation and individual defendants respectively of engaging in the last-named unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the

said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of trade and commerce among the several States;
114 against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

THIRD COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the said first count described, and so were engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the said United States, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the said United States, to wit, the offense of engaging in a combination, among themselves and with such other unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid, which said unlawful conspiracy in this count mentioned then and there was a conspiracy to engage in a combination for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and com-
115 merce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them to be styled "current,

reasonable market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such time prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful combination and ninety per centum thereof during the second year; it being a further element of the said unlawful combination in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be — absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on the said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its excess sales, in which
116 case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their cooperation in carrying out the said unlawful combination, the said

defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful combination; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, are now here in this count charged to be acts by the said corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a con-
117 spiracy to commit an offense against the said United States;
Against the peace and dignity of the said *said* United States;
Against the peace and dignity of the said United States, and contrary to the form of the statute in such case made and provided.

FOURTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in

connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State, but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchan-
118 dise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the aforesaid business and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section one of the said Act of Congress, approved July 2, 1890, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Ala-

bama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company,
119 and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly engage in a conspiracy in restraint of commerce among the several States, to wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, whereby the said commerce was restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise which were maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the period of such unlawful conspiracy, and greatly in excess of those prices which would have otherwise prevailed in the said States during the period of such unlawful conspiracy, and were therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby earnest money was given to secure the maintenance of such prices and compensation was made to those losing volume of business by reason of maintaining such prices, that is to say:

There was from time to time allotted to each of said corporation

defendants and firms an amount of tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporations defendants and firms paid into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sums becoming due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which faithfully maintained such uniform and non-competitive prices and failed to make sales
120 and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but sold and delivered through itself and its subsidiary companies a minimum amount thereof required as a guarantee of good faith, received from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid fell short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies made such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, as a penalty upon such excess sales, paid into such common fund like amounts per ton on the said respective kinds of fertilizers, divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means whereby said unlawful conspiracy was effected, a corporation of Ontario, Canada, whose stock was apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was the common fund aforesaid into which was paid the earnest money and penalties on excess sales aforesaid, and from which was paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which the same was operated and directed.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that within the period aforesaid of said unlawful conspiracy in this count of this indictment mentioned, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and did do and perform such acts as acts on their respective parts of engaging in the said unlawful conspiracy in this count of this indictment mentioned, and that each of such defendants at the time and place when

and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that such
121 act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, and as an act on the part of such defendant in engaging in the same, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year, nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the
122 tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to

Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chatta-
123 nooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit,
124 "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawul conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec. 6, 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abraham C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P.
125 Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said corporation and individual defendants, during the period of time aforesaid, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

FIFTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen

hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the
126 other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so

carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, approved July 2, 1890, the said corporation de-
127 fendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, and engage in a conspiracy among themselves and with such other unknown corporations and persons, in restraint of commerce among the several States, to-wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid by which unlawful conspiracy said commerce was to be restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the

various points of delivery in the said States of the conspiracy,
128 which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy, and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices, that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to make sales and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales as aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose
129 treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary

and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful conspiracy was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that such act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the ewenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

130 In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Dercherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one

Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesand, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company,
131 on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of

Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District
132 of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his, the said E. W. Connell's name as such Treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fer-

tilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tenneess, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after
the words "Approved—Nashville, Tenn., Dec. 6 1904" and
133 above the word "Manager" upon the face of a certain other
printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for

the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

134 SIXTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United

States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An
135 Act to protect trade and commerce against unlawful restraints and monopolies"; that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorneys of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and in the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section 5440 of the Revised Statutes of the United States, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack,
136 George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Roys-

ter, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the United States, to wit, to engage in a combination in restraint of commerce among the several States, namely, a combination in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, and did then and there so conspire to commit the aforesaid offense by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy; and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices; that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to
137 make sales and deliveries of such merchandise through itself and its subsidiary — amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation

defendants and firms which, through itself and its subsidiary companies, should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful combination was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that

138 such act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the

object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at
139 West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. [illegible] Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and

within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchan-
140 dise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Arndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee,

unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Man-
141 ager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec 6 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee,

unlawfully did cause to be written and sent by mail to "D. P. Haynes and Bro.," at Oxford, Alabama, that certain letter of the date
142 set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley, By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did conspire to commit an offense against the United States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

ABRAM M. TILLMAN,
United States Attorney.

(Endorsed as follows:) No. 963. United States Circuit Court, Middle District of Tennessee. *The United States vs. Virginia-Carolina Chemical Company et als.*

Indictment for violating Act of Congress approved July 2, 1890, and entitled "An Act to Protect Trade and Commerce against unlawful restraints and monopolies," and Section 5440 R. S. U. S.

A True Bill. Robert Q. Stewart, Foreman of the Grand Jury.

Names of Witnesses Sworn and Examined Before the Grand Jury.

J. C. Adams, Henry E. Ahern, Lee Asheraft, Eugene Atkinson, N. E. Barker, W. F. Barrett, James C. Beck, J. M. Berry, W. W. Bird, L. W. Botts, Clarence Braden, S. D. Bramlitt, A. P. Brantley,
B. D. Brantley, Dewitt Brown, H. C. Brown, Arthur Bussey,
143 Hezekiah Bussey, E. J. Blume, James A. Boyd, William F. Burns, Oscar Bright, J. W. Carter, B. G. Clark, C. W. Comes, E. W. Connell, Charles Earle Currie, R. L. Davis, Joseph Denee, W. P. Diehl, A. M. Dobbs, John V. Dobson, C. H. Drayton, W. L. Dumas, J. B. Duncan, S. Eastland, T. B. Edwards, Culpepper Exum, H. C. Fischer, J. B. Fiser, Albert French, C. A. Gambrill, A. H. George, John E. Gibbs, William Gilchrist, James M. Goldsmith, A. A. Green, E. P. Grice, W. A. Hansell, G. A. Harrington, H. J. Harby, Allen Hardison, L. C. Hayne, J. L. Haynes, D. P. Haynes, R. W. Henderson, P. W. Hendricks, E. R. Hodgson, junior, E. R.

Hodgson, senior, J. L. Horn, W. E. Hudson, T. J. Hunt, R. H. Johnston, T. V. Kessler, E. M. Kirk, Henry Kirn, H. L. Law, Alexander Leslie, J. A. Lindsey, W. Hampton Logan, Harry Luck, John A. Lewis, W. F. McKenzie, Robert F. Maddox, H. W. Malloy, E. R. Manning, H. L. Milligan, J. Allen Moore, M. B. Neece, W. J. Oliver, E. Thomas Orgain, D. B. Osborne, Every M. Paget, W. W. Perkins, Dr. J. D. Plunkett, F. B. Pope, William Price, Charles Rainey, Frederick Rayfield, Isaac W. Read, W. A. Reynolds, I. T. Rhea, W. E. Richards, H. A. Rogers, V. N. Roadstrum, W. G. Sadler, G. W. Sanders, E. M. Sentelle, W. McR. Smith, R. G. Sparrow, J. F. Stackley, C. A. Steifelmeyer, S. E. Stewart, W. B. Stratford, John Sutterer, E. R. Taber, Frank E. Taylor, W. B. Taylor, W. D. Tharin, J. R. Timmerman, J. W. Todd, S. W. Travers, George H. Tucker, E. Van Winkle, J. T. Welch, O. C. Wiley, C. H. Willcox, T. B. Williams, Benjamin L. Willingham, W. S. Wight, E. G. Woodling.

Filed 11:30 A. M., May 25, 1906. H. M. Doak, Clerk, by E. L. Doak, Deputy Clerk. Abram M. Tillman, U. S. Atty.

I, H. M. Doak, Clerk of the Circuit Court of the United States in and for the Middle District of Tennessee, hereby certify that the foregoing is a true, perfect, and complete copy of an indictment filed as thereupon endorsed, etc. In witness whereof I have hereunto signed my name and affixed the seal of said court, at my office, this the 26th day of May, 1906.

[SEAL OF COURT.] H. M. DOAK, *Clerk.*

144 *Warrant.*

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

To the Marshal for the Eastern District of Virginia, Greeting:

Whereas complaint in writing, on oath, has been made to me charging that George Braden of —— —— stands indicted by the grand jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said George Braden on the eighth day of July, in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, did in the Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said George Braden did unlawfully conspire with divers other persons and corporations to com-

mit an offense against the United States, to-wit, the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States; and application has been made to me that the said George Braden may be arrested and imprisoned and removed or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee;

Now therefore, you are hereby commanded to arrest the
145 said George Braden if he be found within your said District, and bring him forthwith before me at my Chambers in Richmond, in order that he may be dealt with according to law.

Richmond, July 14, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge.

Marshal's Return.

Pursuant to the within writ, I have taken the defendant George Braden into custody and now have him before Hon. Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia.

July 14, 1906.

MORGAN TREAT,
United States Marshal.

Conclusions of the Court.

Filed July 14th, 1906.

THE UNITED STATES
vs.
GEORGE BRADEN.

The conclusion reached by the Court is that in a proceeding for the arrest and removal of persons charged with a violation of the laws of the United States pursuant to section 1014 of the Revised Statutes of the United States, before a United States District
146 Judge sitting in the State of Virginia, in which State there no longer exists the right of a preliminary examination upon a criminal charge prior to the trial upon the merits, when such Judge is called upon to act as well in the matter of the apprehension of such persons, as in their removal to the jurisdiction in which they have been indicted, that upon the government's presentation of a sufficient indictment regularly found by a grand jury in a court of the United States, properly charging the commission of an offense within the district in which such indictment is found, coupled with proof of the identity of the person indicted, it is its duty to properly bail such person for appearance before the Court in which he is indicted, or cause him to be removed thereto.

Order Allowing Bail.

Filed July 14, 1906.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The within named George Braden having been brought before me, and identified; and it appearing by a duly authenticated copy of an indictment that he stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al,*" for violation of section one of the act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of Section 5440 of the Revised Statutes of the United States, it is ordered that the said George Braden give
147 bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial before said Court under the said indictment, or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee, to be there dealt with according to law.

Richmond, Va., July 14", 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the
Eastern District of Virginia.

Warrant of Imprisonment and Removal.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The President of the United States to the United States Marshal of the Eastern District of Virginia, Greeting:

Whereas it has been made to appear that George Braden stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled: "The United States *vs.* Virginia-Carolina Chemical Company *et al,*" for violation of section one of the act of Congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States; and whereas the said George Braden having been brought before me, and identified; and a certified copy
148 of said indictment furnishing probable cause to believe him to be guilty as therein charged, and whereas it was thereupon ordered by me that said defendant give bail in the sum of five thousand dollars with one or more sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial under said indictment, or that in de-

fault thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee to be there dealt with according to law; and the said defendant having failed and refused to give bail as required, therefore;

You are hereby commanded in the name and by the authority of the said United States to imprison the said George Braden in accordance with law, and that with all convenient speed you remove him hence to the said Middle District of Tennessee and there surrender him to the Marshal of that District, there to be dealt with according to law.

Richmond, Va., July 14, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the
Eastern District of Virginia.

Marshal's Return on Foregoing Warrant

Executed July 14, 1906, by taking the within named defendant George Braden into custody, but before the order of removal was executed, a writ of *Habeas Corpus* was issued by order of the Circuit Court of the United States for the Eastern District of Virginia, sitting at Richmond, Virginia, commanding me to produce the body of the said George Braden before the said United States
149 Circuit Court in the City of Richmond, Virginia, forthwith, and in pursuance of said writ of *Habeas Corpus*, I took the said George Braden before the United States Circuit Court as aforesaid, by which court said writ of *Habeas Corpus* was discharged and an appeal allowed to the said George Braden to the Supreme Court of the United States, pending which appeal the said George Braden was by order of said Circuit Court discharged from custody on bond conditioned for his appearance before said Circuit Court to abide such order as should be made by said Circuit Court upon return of the mandate of said Supreme Court of the United States upon determination of said appeal.

Richmond, Virginia, July 14, 1906.

MORGAN TREAT,
United States Marshal.

Statement of Proceedings and Order.

Filed July 14, 1906.

THE UNITED STATES OF AMERICA, *Eastern District of Virginia:*

THE UNITED STATES
vs.
GEORGE BRADEN.

This is an application under the provisions of Section 1014 of the United States Revised Statutes for a warrant for the removal of George Braden to the Middle District of Tennessee and comes before me as follows:

The District Attorney for this District, together with Mr. E.
150 T. Sanford, Counsel for the United States, presented to me a verified complaint of Morgan Treat, United States Marshal for this District, with a certified copy of an Indictment filed on May 25th, 1906, in the Circuit Court of the United States for the Middle District of Tennessee in the case of the United States *vs.* Virginia-Carolina Chemical Company and other defendants, including among such defendants the said George Braden.

Said complaint and copy of said indictment are made parts of this order. Upon the exhibition of this Indictment and affidavit and the *ex parte* motion of the counsel for the United States I made an order for the arrest of said George Braden and his production before me.

This order was duly executed by the said Marshal, who arrested the said George Braden and brought him before me in Richmond on this 14th day of July, 1906, as shown by his return. When the accused was so brought before me it was moved by the counsel for the United States that inasmuch as the indictment charged offenses against the United States triable in the Circuit Court of said United States for the Middle District of Tennessee, and the identity of the defendant was admitted, that an order be forthwith made for the commitment of said George Braden for trial before said Circuit Court.

This motion was made upon the certified copy of the Indictment without any further testimony, the identity of the party arrested and brought before me as the George Braden mentioned in the Indictment being admitted.

It was further stated and agreed that while the defendant George Braden, was not a resident of the Eastern District of Virginia, he was present in this District with his counsel, and that so far as the jurisdiction in the Eastern District of Virginia was concerned,
151 he consented to these proceedings being instituted here, and to their being conducted here with the same force and effect, and in like manner as if he was a resident of the Eastern District of Virginia; and furthermore waived the previous issuance of any bench warrant for his arrest, from the Circuit Court of the Middle District of Tennessee, if the same were necessary.

And thereupon the defendant George Braden offered himself as witness in his own behalf, and being about to be sworn, the United States, by its Counsel, thereupon objected to the witness being sworn, or to any testimony being given in rebuttal of the indictment in these proceedings on the ground that the identity of the defendant being admitted, inasmuch as the indictment on its face charges offenses against the United States committed and triable in the jurisdiction in which the defendant stands indicted, no evidence is admissible here to impeach the indictment, and the order of commitment should be made without other proof.

The defendant's counsel thereupon offered to prove by the defendant, and other witnesses then and there present, that the Circuit Court for the Middle District of *the Middle District of* Tennessee had no jurisdiction over the person of said defendant touching the offense

charged in said indictment, in that defendant and said other witnesses would if permitted, testify that your petitioner did not, within the Middle District of Tennessee, on the 8th day of July, 1903, or during the period between the 8th day of July, 1903, and the 1st day of September, 1905, or at any other time, engage in the said alleged
152 conspiracies engaged in in the said Middle District of Tennessee, or any or either of them, or at any time, or at any place, do any act in furtherance of, or to effect the object of said alleged conspiracies engaged in in the Middle District of Tennessee or any or either of them.

Nor has the defendant done, or performed, or been engaged in, or been a party to the said conspiracies engaged in in the Middle District of Tennessee or any of them in any other place or places, at any other time or times whatsoever.

Thereupon counsel for the Government renewed its objections as aforesaid. After hearing counsel on both sides, the Court announced its conclusions as follows:—

"The conclusion reached by the Court is that in a proceeding for the arrest and the removal of persons charged with a violation of the laws of the United States pursuant to section 1014 of the Revised Statutes of the United States, before a United States District Judge, sitting in the State of Virginia, in which State there no longer exists the right of a preliminary examination upon a crime charged prior to the trial upon the merits, when said Judge is called upon to act as well in the matter of the apprehension of such persons, as in their removal to the jurisdiction in which they have been indicted, that upon the Government's presentation of a sufficient indictment, regularly found by a grand jury in a Court of the United States, properly charging the commission of an offense within the district in which such indictment is found, coupled with proof of the identity of the person indicted, it is its duty to properly
153 bail such person for appearance before the court in which he is indicted, or cause him to be removed thereto."

Therefore it was ordered that the testimony offered is inadmissible, and will not be received, and I therefore made the following order:

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The within named George Braden having been brought before me, and identified; and it appearing by a duly authenticated copy of the indictment that he stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al.,*" for violation of section one of the act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States, it is ordered that the said George Braden give bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial before said Court

under said indictment; or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee, to be there dealt with according to law.

Richmond, Va., July 14th, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

154 And after said order had been made and the defendant declined to give bond, the Counsel for the United States moved that the warrant do issue directed to the Marshal of this District for the imprisonment and removal of the said George Braden to the Middle District of Tennessee and his delivery to the custody of the United States Marshal of that district.

On such motion counsel for the said George Braden objected and again offered the said George Braden as a witness, together with the other witnesses here-before referred to, to establish the same matters and facts as hereinbefore stated with regard to the objection to the order for the commitment of the said George Braden which testimony was again offered and was again objected to by the counsel for the United States on the same grounds as above set forth, and on the further ground that these matters could not now be inquired of in this stage of the proceedings, and was again excluded by the court, to all of which counsel for the said George Braden duly excepted and had the exceptions noted and entered.

I therefore issued a warrant directed to the Marshal as follows:

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

Richmond, Va., July 14, 1906.

Warrant of Imprisonment and Removal.

UNITED STATES OF AMERICA, *Eastern District of Virginia, set:*

The President of the United States to the United States
155 Marshal of the Eastern District of Virginia, Greeting:

Whereas it has been made to appear that George Braden stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said court entitled: "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," for violation of section one of the act of Congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States; and whereas the said George Braden having been brought before me, and identified; and a certified copy of said indictment furnishing probable cause to believe him to be guilty as therein charged, and whereas it was thereupon ordered by me that said defendant give bail in the sum of five thousand dollars with one or more sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial under said indictment, or that in default thereof he

be imprisoned for seasonable removal to the said Middle District of Tennessee to be there dealt with according to law; and the said defendant having failed and refused to give bail as required, therefore:

You are hereby commanded in the name and by the authority of the said United States to imprison the said George Braden in accordance with law, and that with all convenient speed you remove him hence to the said Middle District of Tennessee and there surrender him to the Marshal of that District there to be dealt with according to law.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

Richmond, Va., July 14, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge.

Richmond, Va., July 14, 1906.

156 *Certificate of Clerk.*

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

I, G. E. Bowden, Clerk of the District Court of the United States for the Eastern District of Virginia, do hereby certify that the foregoing is a full and true transcript of the record and proceedings in the therein entitled cause made in obedience to the direction in the return of the Honorable Edmund Waddill, Jr., Judge of said Court to the writ of certiorari, attached to and made a part of said record.

In witness whereof, I have hereunto set my hand and affixed the seal of the said District Court, at the City of Richmond, this 14th day of July, A. D. 1906.

[Seal United States District Court.]

G. E. BOWDEN,
Clerk United States District Court,
By JOSEPH P. BRADY,
Deputy Clerk U. S. District Court.

Certificate of United States District Judge.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

I, Edmund Waddill, Jr., Judge of the District Court of the United States for the Eastern District of Virginia do hereby certify that the foregoing is a full and true transcript of the record and
157 proceedings had before me in the therein entitled cause.

In witness whereof, I hereunto set my hand and seal of said court at Richmond, this 18th day of July, A. D. 1906.

[Seal United States District Court.]

EDMUND WADDILL, JR.,
United States District Judge.

158 *Conclusions of the Court.*

Filed July 14th, 1906.

In the United States Circuit Court for the Eastern District of Virginia.

In the Matter of the Petition of GEORGE BRADEN for Writs of *Habeas Corpus* and Certiorari.

GEORGE BRADEN, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

Petitioner alleges that he is unlawfully deprived of his liberty. He prays that by virtue of the writ of *Habeas Corpus*, he may be discharged from custody. I find from the petition, from its exhibits, and from respondent's reply that petitioner has been committed to the Marshal of the Eastern District of Virginia by an order of the United States District Judge of that District, with directions to remove petitioner to the Middle District of Tennessee, in order that he may be there tried on an indictment in which he with others, is charged with a violation of the laws of the United States. The proceedings so resulting were conducted under the provisions of section 1014 of the Revised Statutes of the United States. The Judge so hearing the matter, and so issuing said order of removal, acted in conformity with like proceedings, as provided for in criminal actions in the state of Virginia, in which state petitioner resides, and where the application for his removal was made.

159 On the hearing of this petition, I am asked to permit petitioner to offer testimony, the object of which is to show that probable cause does not exist as to petitioner's guilt of the offense of which he is charged; that he was not within the limits of the jurisdiction of the Middle District of Tennessee when said offense is alleged to have been committed; and testimony tending to show that he is innocent of the charge alleged in the indictment returned against him. Petitioner insists that he should not be removed to said Middle District of Tennessee for trial, but should be discharged from arrest. Should I, on this hearing, permit such testimony? I find from the record before me, that the indictment charges conspiracy; that it is alleged therein that petitioner with others, did in the Middle District of Tennessee, conspire to commit an offense against the laws of the United States. The indictment, in my judgment, sufficiently sets forth such offense. I find that it is in due form, and that it charges a crime; that it alleges a conspiracy such as is prohibited by the laws of the United States; and that an overt act, as described in the statute is charged as having taken

place in the Middle District of Tennessee. Such being the charge, I am of the opinion, under the law applicable thereto, that the personal presence of petitioner in said jurisdiction was not essential; and that he can be lawfully proceeded against in that district; and if the allegations set out in the indictment are sustained by competent evidence, that a conviction there can be upheld.

If such be the case, does it not follow that the testimony offered by the petitioner is immaterial? The indictment charges the commission of a crime; alleges that the petitioner with others committed it; and the laws authorizes his conviction in the district to which he has been ordered removed, if an overt act in pursuance of
160 said conspiracy was committed there. Technical objections to said indictment should not be considered by me on this hearing; they should only be heard by the court in which the indictment was returned.

While it is true that the order to remove for trial should only be issued in cases where probable cause has been shown, it is equally true that a certified copy of the indictment, with proof of the identity of the party accused, has been in a number of well considered cases, held to establish probable cause, and to authorize the warrant of removal. It must be conceded that the authorities are conflicting; but to my mind the path we should follow has been plainly indicated by the opinions of that great tribunal, whose mandates we all obey, whose judgments are the supreme law of the land. In Beavers *v.* Hanckel, 194 U. S., 73, the case rested on the efficacy of the indictment; for no other evidence of guilt was offered. The indictment was held to be *prima facie* evidence of the existence of probable cause. It satisfied the requirements of the constitution, and the laws made thereunder. Why should not the indictment in the case we now have under consideration serve the same purpose? The testimony tendered is, as I understand this case, immaterial, and the identity of the accused is admitted. His guilt or innocence is not to be ascertained by testimony offered in this jurisdiction, in connection with questions involved in the proceedings relating to the warrant of removal, or this writ of *habeas corpus*. That matter must go to the jury impaneled by the court in which the indictment was returned. To hold otherwise would result in inextricable confusion, and to discharge the petitioner on the showing now made, would tend to impede the due administration of justice; and can
161 only be done, in my opinion, by a strained construction of the statutes.

The writ will be dismissed, and petitioner will be remanded to the custody of the Marshal.

NATHAN GOFF,
U. S. Circuit Judge.

July 14th, 1906.

Order Dismissing Petition and Discharging Writ of Habeas Corpus and Allowing Appeal.

Filed July 14th, 1906.

In the Circuit Court of the United States for the Eastern District of Virginia.

In the Matter of the Petition of GEORGE BRADEN for Writs of *Habeas Corpus* and Certiorari.

GEORGE BRADEN, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

This cause was on this, the 14th day of July, 1906, heard before the Honorable, the Circuit Court of the United States for the Eastern District of Virginia, the Honorable Nathan Goff, Circuit Court Judge, presiding, upon the petition of said George Braden
162 in this cause and the return of the Marshal, the defendant, thereto, and the return of the District Judge of the Eastern District of Virginia (by agreement the copy of the findings and order of said District Judge being here now taken as his return to said writ of certiorari, and the motion of the petitioner, by his counsel, hereinafter mentioned.

The petition and the return of the Marshal thereto were read, and thereupon the petitioner presented himself as a witness and his counsel moved the Court that he be sworn in order to testify as such, and as such witness to prove the facts averred and set forth in said petition, which facts were then and there repeated and restated to the Court; and his counsel then also stated that the said witness, and other persons then present as witnesses, would testify and prove that the said facts set forth and averred in the petition and exhibits, and repeated by him to the Court, were true.

Thereupon the Honorable Edward T. Sanford, Special Counsel representing the United States, and also the defendant Marshal, objected to the swearing of the said petitioner as a witness and also to the admission of said evidence, upon the ground that said evidence was immaterial and irrelevant, and that it was not allowable to contradict or transverse by evidence in this Court the averments of the indictment which had been found against the petitioner in the Circuit Court of the United States for the Middle District of Tennessee, and that there was no error in the action of the District Judge. The objection so made was sustained, and the witness not allowed to be sworn nor allowed to testify to the facts above stated, to which action of the Court the petitioner then and there excepted.

163 Thereupon it was ordered and adjudged by the said Court that the petition be dismissed and the writ of *habeas corpus* heretofore issued in this cause upon the said petition be and the same is hereby dismissed and discharged; and that the said George Braden be remanded to the custody of said Morgan Treat, U. S. Marshal, for the Eastern District of Virginia, to be dealt with by him according to the directions of the writ of the process under which he had custody of the said George Braden.

Thereupon, the petitioner presented his petition, setting forth that he was aggrieved by the said order dismissing the said writ of *habeas corpus*, and praying that he be allowed to prosecute an appeal from said final order or judgment, to the Supreme Court of the United States under and according to the law of the United States in that behalf made together with his assignment of error in that behalf which appeal is allowed; and the petitioner having been allowed and the said appeal being hereby granted, the petitioner, by his counsel, thereupon moved the Court that he be enlarged or admitted to bail pending the decision of his said case upon said appeal; and thereupon it was accordingly ordered that the said petitioner and appellant be, and he is hereby enlarged upon his bond and admitted to bail, pending the said appeal to the Supreme Court of the United States; said bond to be in the penal sum of $5,000.00, to be taken and approved by the Clerk of this Court and conditioned for the said petitioner and appellant to appear before this Court to abide such order as shall be made by this Court upon the mandate of the Supreme Court of the United States upon the determination of petitioner's said appeal; and upon the execution by the said George Braden of such bond, with surety or sureties, to be approved by the Clerk of this Court, he will be enlarged and admitted to bail. The Clerk will take as surety any satis-

164 factory guaranty company.

The opinion of the Court in dismissing the petition and discharging the writ of *habeas corpus* is made part of the record herein and will be copied by the Clerk in the transcript on appeal.

NATHAN GOFF,
U. S. Circuit Judge.

July 14, 1906.

Appearance Bond.

Filed July 14th, 1906.

In the Circuit Court of the United States for the Eastern District of Virginia.

In the Matter of the Petition of GEORGE BRADEN for Writs of *Habeas Corpus* and Certiorari.

GEORGE BRADEN, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

We, as principal, and American Surety Company of New York a guaranty and surety company, organized and existing under the laws of the State of New York, with power and authority to become surety for principals in appearance bonds, jointly and severally acknowledge ourselves to owe and to be bound to the United States of America in the penal sum of Five Thousand Dollars ($5,000.00), severally to be made and levied of our goods, chattels, lands and tenements, if default be made herein.

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The condition of this obligation is as follows: Whereas the said George Braden, being detained in the custody of Morgan Treat, United States Marshal for the Eastern District of Virginia, under commitment and warrant of removal to the Circuit Court of the United States for the Middle District of Tennessee, granted by the Honorable Edmund Waddill, Jr., Judge of the District Court for the Eastern District of Virginia, presented his petition for and sued out a writ of *habeas corpus* from the Circuit Court of the United States for the Eastern District of Virginia, and the said writ of *habeas corpus* duly issued to the said Treat, Marshal, and he made his return thereto; and the said matter of *habeas corpus* came on for hearing before the said Circuit Court of the United States for the Eastern District of Virginia, on the 14th day of July, 1906, when by order thereof the said petition was dismissed and the said writ of *habeas corpus* discharged, and the said George Braden remanded to the custody of the said Morgan Treat, Marshal, to be proceeded with as provided by law; and

Whereas, from the said final order dismissing the said petition and writ of *habeas corpus*, the said George Braden prayed an appeal to the Supreme Court of the United States, which was granted and said appeal perfected; and

Whereas, the said Circuit Court of the United States allow- said appeal, ordered that pending said appeal the said George Braden upon the execution of a bond in the penal sum of Five Thou-

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sand Dollars ($5,000.00), conditioned as by said order was provided, might be enlarged and admitted to bail;

Now, therefore, in compliance therewith, and in order to be so enlarged, the said George Braden as principal, and the said American Surety Company of New York, as surety, execute this bond upon the condition that, if the said George Braden shall duly personally appear in and before the Circuit Court of the United States for the Eastern District of Virginia, then and there to answer the exigency and determination of said appeal, and personally abide the final decision and determination of the said Supreme Court of the United States and of the said Circuit Court of the United States, upon the mandate of the said Supreme Court of the United States, and obey and abide the orders of said Circuit Court of the United States, and not depart without leave upon the conditions aforesaid, and upon the entry of said orders upon said appeal, then and in that event this bond or obligation shall be void; but otherwise it shall be and remain in full force and effect.

*I*t witness whereof, the said George Braden as principal, and the said American Surety Company of New York as surety, the said surety being represented by and through Robert Le Masurier, its duly authorized agent and attorney, have hereunto on this the 14th day of July, 1906, set their hands.

GEORGE BRADEN. [SEAL.]

[Seal of American Surety Company.]

AMERICAN SURETY COMPANY OF NEW YORK,
By ROB'T LE MASURIER, *Agent.*

Signed, sealed and delivered in the presence of
JOSEPH P. BRADY, *Clerk.*

167 *Notice of Appeal.*

Filed July 14th, 1906.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of GEORGE BRADEN for Writs of *Habeas Corpus* and Certiorari.

GEORGE BRADEN, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia; JOSEPH P. BRADY, Deputy Clerk of the District Court of the United States for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

SIRS: Please take notice that George Braden petitioner above named hereby appeals to the Supreme Court of the United States from the final order made and entered on the 14th day of

July, 1906, by the Honorable Nathan Goff, Judge of the Circuit Court of the United States, Fourth Judicial Circuit of Virginia, discharging his application for writs of *habeas corpus* and certiorari and from each and every part of said order.

Dated at the City of Richmond, State of Virginia, on the 14th day of July, 1906.

Respectfully,

JOHN J. VERTRESS,
JAMES C. BRADFORD,
JOHN S. MILLER,
Attorneys for Petitioner and Appellant.

168 *Petition for Appeal.*

Filed July 14th, 1906.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of GEORGE BRADEN for Writs of *Habeas Corpus* and Certiorari.

GEORGE BRADEN, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

The petition of the above named petitioner George Braden for an order, allowing an appeal to the Supreme Court of the United States from the final order in the above styled cause, discharging the writs of *habeas corpus* and certiorari in this cause and remanding petitioner to the custody of the said Morgan Treat, United States marshal.

George Braden, the petitioner and appellant above named, feeling himself aggrieved by the final order heretofore made and entered by this Court in this cause on the 14th day of July, 1906, whereby it was ordered that his petition for a writ of *habeas corpus*, directed to said Morgan Treat, United States Marshal, in and for the said District of Virginia, and his writ of certiorari, directed to Hon. Edmund Waddill, Jr., United States District Judge for said
169 District, commanding him to return all the proceedings, warrants, depositions, examinations, commitments and record of all proceedings against your petitioner to the Circuit Court of the United States, were, after the same had been duly granted and return made thereon by this Honorable Court, discharged, and petitioner was by said order remanded to the custody of said Morgan Treat, United States Marshal, as aforesaid.

Now come, Jno. J. Vertress and Jas. C. Bradford, his attorneys

and counsel, praying this court for an order allowing your petitioner to prosecute an appeal from said final order of the United States Circuit Court to the Supreme Court of the United States, and according to the laws of the United States in that behalf made.

Your petitioner is advised by his counsel that *in* the proceedings referred to in the petition for writs of *habeas corpus* and certiorari, and the said order discharging the same have infringed the constitutional rights of your petitioner and that the commitment of your petitioner and the restraint of his person referred to in said petition and under said order is without authority of law and that the said United States District Judge acting as United States Commissioner, before whom your petitioner was arraigned, as set forth in said petition hereinbefore referred to had no jurisdiction to either require bail of petitioner or to commit petitioner in default thereof, and your petitioner desires in good faith to submit the constitutional questions and other questions involved to the Supreme Court of the United States for their determination.

And your petitioner will ever pray, etc.

JOHN J. VERTRESS,
JAMES C. BRADFORD,
JOHN S. MILLER,
Attorneys for Petitioner and of Counsel.

170 UNITED STATES OF AMERICA, *Eastern District of Virginia:*

George Braden, being duly sworn on his oath, deposes and says that he is the petitioner above named, that the foregoing petition is true of his own knowledge, except as to those matters which are therein stated on his information and belief, and as to those matters, he believes them to be true.

—— ——.

Sworn to before me this 14th day of July, 1906.

JOSEPH P. BRADY,
Clerk of the United States Circuit Court,
Eastern District of Virginia.

Assignment of Errors.

Filed July 14th, 1906.

In the Supreme Court of the United States.

In the Matter of the Petition of GEORGE BRADEN for Writs of *Habeas Corpus* and Certiorari.

GEORGE BRADEN, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

The petitioner, George Braden, by John J. Vertress and
171 Jas. C. Bradford and John S. Miller, his Counsel in connection with his petition of appeal herein, entered herein, to the Supreme Court of the United States, from the final order made and entered in the United States Circuit Court of the Fourth Judicial Circuit in and for the Eastern District of Virginia, discharging the writs of *Habeas Corpus* and certiorari and remanding petitioner to the custody of the said Morgan Treat, Marshal, *and* makes and files the following assignment of errors:

1. The court erred in discharging the petitioner's writs of *Habeas Corpus* and Certiorari and remanding him to the custody of the United States Marshal.

2. In refusing to grant the prayer of said writs.

3. In refusing to discharge said petitioner.

4. In holding that the restraint of the petitioner's liberty is legal.

5. In holding that the restraint of your petitioner is not in violation of his substantial rights.

6. In holding that said alleged indictment or any count thereof stated an offence against the laws of the United States.

7. In holding that the alleged indictment, or any count thereof was sufficient upon which to base a warrant of removal.

8. In holding that there was sufficient evidence of probable cause.

9. In holding that the warrant of removal made by the United States District Judge for the Eastern District of Virginia was issued upon the finding of probable cause; and in not holding that said order & warrant of removal were unauthorized & void because said District Judge refused to receive or hear any evidence offered by petitioner.

10. In holding that the alleged indictment with proof of
172 identity was conclusive evidence of probable cause.

11. In holding that upon the introduction in evidence of the alleged indictment with proof of identity that the defendant, your petitioner, was not entitled to introduce evidence offered by him and in refusing to hear or receive evidence offered by him to

show that the alleged offence, charged in said indictment and in each count thereof had not been committed by him in the State of Tennessee, in which state the indictment was found and in so holding, violating Article V and Article VI of the Amendments to the Constitution of the United States in that he was deprived of his liberty without due process of law.

12. In failing to hold that your petitioner is deprived of his liberty without due process of law in violation of Article V of the Amendments to the Constitution of the United States, in that said District Judge refused to hear or receive any evidence offered by your petitioner in that the complaint and evidence referred to herein, which were the sole authority for the petitioner's arrest and commitment as aforesaid failed to charge the petitioner with any crime against the laws of the United States.

13. In failing to hold that the petitioner's detention was in violation of Article V of the amendments to the Constitution of the United States in that the said United States District Judge, sitting as United States Commissioner and the United States District Judge has such jurisdiction to order the arrest and commitment of your petitioner, and that your petitioner is held to answer for a crime without any sufficient or valid indictment of a grand jury.

14. In failing to hold that restraint of your petitioner is in violation of Article IV of the Amendments to the Constitution of the United States, because it appears from the indictment upon
173 which the warrant in this case was issued that it was wholly void.

15. In failing to hold — the restraint of your petitioner is in violation of the provisions of Article IV of the amendments to the Constitution of the United States for the reasons particularly specified in his petition for a writ of *habeas corpus.*

16. In holding that a warrant of removal should issue for the reason that the proceedings conclusively show, by the indictment that the venue for the facts alleged in the indictment is not and was not in the Middle District of the State of Tennessee or in the State of Tennessee.

17. In failing to hold that the restraint of your petitioner is in violation of the provisions of Article VI of the amendments to the constitution of the United States for the reason that upon the proof offered to be made and rejected by the United States District Judge, sitting as a commissioner, and the United States District Judge and this Honorable Court, sitting upon the hearing of the petition of *habeas corpus,* and by the averments of said petition which were not controverted, it was conclusively shown that the offences charged in the indictment were not committed in the Middle District of the State of Tennessee or in the State of Tennessee, and that he could not be lawfully tried by a jury of the State of Tennessee and of the Middle District of Tennessee where said indictment was found.

18. In holding that the warrant of removal was properly issued, as the record and proceedings conclusively show that the alleged offence, complained of in the indictment and the several counts thereof, did not occur within the Middle District of the State of

Tennessee, or in the State of Tennessee, and that your pe-
174 titioner did not conspire to commit any offence within the State of Tennessee, or in the Middle District thereof.

19. In holding that your petitioner was lawfully in the custody of said Morgan Treat, United States Marshal in and for the Eastern District of Virginia, and was lawfully deprived of his liberty by him by due process of law.

20. For other errors appearing on the record, by reason whereof, the petitioner prays that the said order, discharging said writs of *Habeas Corpus* and Certiorari be reversed and the petitioner discharged from custody.

JOHN J. VERTRESS,
JAMES C. BRADFORD,
JOHN S. MILLER,
Attorneys for Petitioner and Appellant.

Appeal Bond.

Filed July 14th, 1906.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of GEORGE BRADEN for Writs of *Habeas Corpus* and Certiorari.

GEORGE BRADEN, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

175 Know all men by these presents, that, we, George Braden and James G. Tinsley his surety, are held and firmly bound unto the United States of America, in the full and just sum of Five hundred dollars to be paid to the United States, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this 14th day of July, 1906.

Whereas, lately, to-wit; on the 14th day of July, 1906, at the Circuit Court of the United States, in and for the Fourth Judicial Circuit, Eastern District of Virginia, in a proceeding therein pending, an order was entered discharging the writs of *habeas corpus* and certiorari, of the above named petitioner in the above mentioned proceeding and said petitioner having duly obtained an appeal from the said order to the Supreme Court of the United States and filed a copy thereof in the Clerk's office of said Circuit Court to review the same,

Now, the Condition of the Above Obligation, is such, that if the said petitioner George Braden, shall prosecute said appeal to effect and shall answer all costs if he should fail to make said appeal good, then this obligation to be void; else to remain in full force and effect.

GEORGE BRADEN. [SEAL.]
JAMES G. TINSLEY. [SEAL.]

Sealed, and delivered, and taken and acknowledged, this 14th day of July, 1906, before me,

JOSEPH P. BRADY, *Clerk.*

UNITED STATES OF AMERICA,
Eastern District of Virginia, To wit:

176 James G. Tinsley being duly sworn says that he is worth more than the sum of Five Hundred Dollars, over and above all his just debts and liabilities.

Sworn to before me this 14th day of July, 1906.

JOSEPH P. BRADY, *Clerk.*

Citation.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of GEORGE BRADEN for Writs of *Habeas Corpus* and Certiorari.

GEORGE BRADEN, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia; Jos. P. BRADY, Deputy Clerk of the District Court of the United States for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Judge L. L. Lewis, United States District Attorney for the Eastern District of Virginia; Jos. P. Brady, Clerk of the United States Circuit Court for the Eastern District of Virginia; Morgan Treat, United States Marshal in and for the Eastern District of Virginia; Hon. Edmund
177 Waddill, Jr., United States District Judge for the Eastern District of Virginia, and Jos. P. Brady, Deputy Clerk of the United States District Court for the Eastern District of Virginia:

You are cited and admonished to be and appear at the Supreme Court of the United States at the City of Washington, within thirty

days from the date of this writ, pursuant to an appeal duly allowed by the Circuit Court for the Fourth Judicial Circuit, Eastern District of Virginia and filed in the Clerk's Office of said Court on the 14th day of July, 1906, in the cause entitled, in the matter of the petition of George Braden for writs of *habeas corpus* and certiorari, George Braden, appellant, *versus*, Morgan Treat, United States Marshal in and for the Eastern District of Virginia, Jos. P. Brady, Deputy Clerk of the District Court of the United States in and for said Eastern District of Virginia, and Hon. Edmund Waddill, Jr., United States District Judge in and for said Eastern District of Virginia, Appellees, to show cause, if any, why the final order of said Circuit Court, rendered against the appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Hon. Nathan Goff, Judge of the United States Circuit Court, this 14th day of July, A. D., 1906.

NATHAN GOFF,
Judge of the Circuit Court of the United States.

Acceptance of Service by United States District Judge.

Legal service of the within Citation is hereby acknowledged this 21st July, 1906.

EDMUND WADDILL, Jr.,
U. S. Dist. Judge.

178 *Marshal's Return.*

Executed this 23rd day of July 1906, by delivering in person in the City of Richmond, Va., a true copy of the within citation to the following named persons viz: L. L. Lewis United States District Attorney for the Eastern District of Virginia, Joseph P. Brady Clerk of the United States Circuit Court for the Eastern District of Virginia, Joseph P. Brady Deputy Clerk of the United States District Court for the Eastern District of Virginia.

MORGAN TREAT,
United States Marshal.

Further executed this 23rd day of July 1906, by delivering in person in the City of Richmond, Va. to Morgan Treat United States Marshal for the Eastern District of Virginia, a true copy of this citation.

MORGAN TREAT,
United States Marshal,
By M. J. ENRIGHT,
Office Deputy Marshal.

179 *Order Transmitting Record.*

And thereupon, it is ordered by the Court here that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the Supreme Court of the United States of America, and the same is transmitted accordingly.

Teste:

JOSEPH P. BRADY,
Clerk United States Circuit Court.

Clerk's Certificate.

THE UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

I, Joseph P. Brady, Clerk of the Circuit Court of the United States for the Eastern District of Virginia, do hereby certify that the foregoing is a full and true transcript of the record and proceedings of the said Circuit Court, together with all things thereunto relating, in the therein entitled cause.

In testimony whereof, I hereunto set my hand and affix the seal of the said Circuit Court of the United States for the Eastern District of Virginia, at Richmond, this 10th day of August, A. D. 1906.

[Seal United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Endorsed on cover: File No. 20,340. E. Virginia C. C. U. S. Term No. 375. George Braden, appellant, *vs.* Morgan Treat, United States marshal in & for the eastern district of Virginia, *et al.* Filed August 14, 1906. File No. 20,340.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 376.

FRANK S. ROYSTER, APPELLANT,

vs.

MORGAN TREAT, UNITED STATES MARSHAL IN AND FOR THE EASTERN DISTRICT OF VIRGINIA, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

FILED AUGUST 14, 1906.

(20,341.)

(20,341.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906.

No. 376.

FRANK S. ROYSTER, APPELLANT,

vs.

MORGAN TREAT, UNITED STATES MARSHAL IN AND FOR THE EASTERN DISTRICT OF VIRGINIA, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

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a In the Supreme Court of the United States.

In re Petition of FRANK S. ROYSTER for Writs of *Habeas Corpus* and Certiorari.

FRANK S. ROYSTER, Appellant,

vs.

MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia; Jos. P. BRADY, Deputy Clerk of the District Court of the United States for the Eastern District of Virginia, and Hon. EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Judge L. L. Lewis, United States District Attorney for the eastern District of Virginia; Jos. P. Brady, Clerk of the United States Circuit Court for the eastern district of Virginia; Morgan Treat, United States Marshal in and for the eastern District of Virginia; Hon. Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia, and Jos. P. Brady, Deputy Clerk of the United States District Court for the eastern District of Virginia:

You are cited and admonished to be and appear at the Supreme Court of the United States at the City of Washington, within thirty days from the date of this writ, pursuant to an appeal duly allowed by the Circuit Court for the Fourth Judicial Circuit, Eastern District of Virginia, and filed in the Clerk's office of said Court on the 14th day of July, 1906, in the cause entitled, in the matter of the
b petition of Frank S. Royster for writs of *habeas corpus* and certiorari, Frank S. Royster, Appellant, *versus,* Morgan Treat, United States Marshal in and for the eastern District of Virginia, Jos. P. Brady, Deputy Clerk of the District Court of the United States in and for said eastern District of Virginia, and Hon. Edmund Waddill, Jr., United States District Judge, in and for said Eastern District of Virginia, Appellees, to show cause, if any, why the final order of said Circuit Court, rendered against the appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Hon. Nathan Goff, Judge of the United States Circuit Court, this 14th day of July, A. D., 1906.

NATHAN GOFF,
Judge of the Circuit Court of the United States.

c Legal service of the within citation is hereby acknowledged this 21st July, 1906.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

Executed this 23rd day of July 1906, by delivering in person in the City of Richmond, Va. a true copy of the within citation to the following named persons viz: L. L. Lewis United States District Attorney for the Eastern District of Virginia, Joseph P. Brady Clerk of the United States Circuit Court for the Eastern District of Virginia, Joseph P. Brady Deputy Clerk of the United States District Court for the Eastern District of Virginia.

MORGAN TREAT,
United States Marshal.

Marshal's Fees for service $6.00.

Further executed this 23rd day of July 1906 by delivering in person in the City of Richmond, Va. to Morgan Treat United States Marshal for the Eastern District of Virginia, a true copy of the within citation.

MORGAN TREAT,
United States Marshal,
By M. J. ENRIGHT,
Office Deputy Marshal.

Marshal's Fees for service $2.00.

d [Endorsed:] No. —. Circuit Court of the U. S., Eastern District of Virginia. In the matter of the Petition of Frank S. Royster for Writs of *Habeas Corpus* and Certiorari. Frank S. Royster, Appellant, *vs.* Morgan Treat, United States Marshal &c., *et als.*, Appellees. Citation. Filed this 14th day of July, 1906. Joseph P. Brady Clerk.

1 *Transcript of Record.*

THE UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

At a Circuit Court of the United States for the Eastern District of Virginia, begun and held at the Court Rooms in the Custom House, in the City of Richmond, Virginia, on the first Monday in April, being the second day of the same month, in the year of our Lord one thousand, nine hundred and six.

Present: The Honorable Nathan Goff, Judge of the Circuit Court of the United States for the Eastern District of Virginia.

Among other were the following proceedings. to-wit:

In the Matter of the Petition of FRANK S. ROYSTER for Writs of *Habeas Corpus* and Certiorari.

FRANK S. ROYSTER, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

2 *Petition for Writs of Habeas Corpus and Certiorari.*

Filed July 14, 1906.

In the Circuit Court of the United States for the Eastern District of Virginia.

FRANK S. ROYSTER, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

To the Honorable the Judges of the Circuit Court of the United States for the Eastern District of Virginia:

The Petition and Complaint of Frank S. Royster respectfully shows to the Court:

1.

That your petitioner is a citizen of the United States and is a citizen and resident of the Eastern District of Virginia, and is unlawfully imprisoned and restrained of his liberty by Morgan Treat, United States Marshal for the Eastern District of Virginia, in the City of Richmond, and County of Henrico, in said District. That your petitioner is held by said Marshal under color and claim of authority of the United States, by virtue of a warrant for removal claimed to have been issued under section 1014 of the Revised Statutes of the United States, dated July 14th, 1906, signed by the Honorable Edmund Waddill, Jr., Judge of the District Court of the United States for the Eastern District of Virginia, and has been committed and is detained only under and by virtue of said warrant, and not by virtue of any judgment, decree or final order of any court.

3 2.

On the 14th day of July, 1906, at the said City of Richmond, in said District, complaint in writing signed and sworn to by Morgan Treat, United States Marshal in and for said District, a copy of which is hereto attached, marked "Exhibit A," and made part hereof, was presented to the Honorable Edmund Waddill, Jr.,

Judge of the District Court of the United States for the said District, in and by which it was averred that he, the said Morgan Treat, United States Marshal, had good cause to believe and did believe that your petitioner, has been indicted by the Grand Jury of the Circuit Court of the United States in and for the Middle District of Tennessee, for that your petitioner on the 8th day of July, 1903, and during the period of time from that date until and on the first day of September, 1905, and being during said period President of the F. S. Royster Guano Co., a corporation existing under the laws of the State of Virginia, did, in said Middle District of Tennessee, unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section 1 of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and that on the 8th day of July, 1903, at and within the County of Davidson in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, your petitioner did unlawfully conspire with divers other persons and corporations to commit an offense against the United States, to-wit: The offense of engaging in a combination in restraint of trade and commerce among the several States of the United States, all as more fully set out in an indictment filed in the said Circuit Court of the United States in and for the Middle District of Tennessee on May 25th, 1906, a certified copy of which indictment said complaint states was thereto attached and made a part of said complaint, and in and by which said complaint, said complainant did, therefore, charge that your petitioner did commit the said offense against the United States in the manner and form as set forth in said indictment, and did furthermore aver in said complaint upon information and belief, that in pursuance of an order of the said Circuit Court of the United States for the Middle District of Tennessee, a bench warrant had been issued from said Court for the arrest of your petitioner and delivered to the Marshal of the said Court, who, after due search had returned said warrant "Not found" in said Middle District of Tennessee and that your petitioner is now believed to be within the Eastern District of Virginia, of which District he is a resident.

4

And said complainant, said Morgan Treat, United States Marshal, in and by said complaint did therefore pray that your petitioner might be arrested, imprisoned, and removed or bailed, as the case might be, for trial before said Circuit Court of the United States for the Middle District of Tennessee, and further dealt with according to law; all of which will appear from the said complaint, a copy of which is hereto attached as aforesaid, reference thereto being hereby made for greater certainty. And that thereupon, to-wit, on the said 14th day of July, 1906, a warrant for his arrest was issued by the Honorable Edmund Waddill, Jr., Judge as aforesaid upon the aforesaid complaint, which came to the hands of the said Morgan Treat, Marshal as aforesaid, and he, in obedience thereto, arrested your petitioner and brought him before the said Honorable Edmund Waddill, Jr., Judge as aforesaid, and made return of said

warrant, endorsed thereon, and a copy of said warrant with the endorsement thereon is hereto attached marked "Exhibit B" and made a part hereof.

3.

That thereupon then and there, the United States Attorney
5 in and for the said Eastern District of Virginia, for and on behalf of the United States, did offer and introduce in evidence to and before the said Judge, in support of the averments of the said complaint of said Morgan Treat, United States Marshal, a certified copy of the said indictment mentioned and referred to in the said complaint. A certified copy of said indictment so offered and introduced in evidence is hereto attached, marked "Exhibit C," and made a part hereof, and the identity of your petitioner with and as the said Frank S. Royster mentioned and referred to in said indictment as one of the defendants therein, having been then and there admitted by your petitioner, the Government, the United States of America, introduced or offered no other or further proof or evidence in support of the said complaint or of the averments therein, but rested its case upon the said hearing of the said complaint before the said Judge.

4.

That thereupon, then and there, your petitioner, by his counsel, proceeded to offer, and offered, proof and evidence by witnesses then and there present to show that your petitioner did not within the said Middle District of Tennessee, on the 8th day of July, 1903, or during the period between the 8th day of July, 1903, and the 1st day of September, 1905, or at any other time, engage in the said alleged conspiracies in the said indictment mentioned, or any or either of them, or at any time or at any place, join in or assent to the said alleged conspiracies, engaged in or entered upon in said Middle District of Tennessee, or any or either of them, or at any time or at any place do any act in furtherance of, or to effect the object of said alleged conspiracies engaged in in said Middle District of Tennessee, or any or either of them. Thereupon, then and there, the Counsel for the Government, upon the said hearing, did object to the introduction on the behalf of your petitioner of the said evidence or any evidence or *or* proof tending
6 to contradict or controvert the respective averments, or any or either of them in the said indictment and in the respective counts thereof, viz: that your petitioner did engage in the said alleged conspiracy in said indictment mentioned and referred to, in the said Middle District of Tennessee, in manner and form as in the said indictment in that behalf averred, or to contradict or controvert or disprove any of the averments in the said indictment contained,—on the ground, then and there stated, that upon the said hearing of said complaint the said certified copy of the said indictment was conclusive evidence of every fact therein averred to sustain and prove upon the said hearing the said complaint of the said Morgan Treat, United States Marshal, and the averments thereof, and the probable cause of the commission by your petitioner of the

said supposed offenses in the said indictment mentioned and of any and every of them in the manner and form as in the said indictment aver-ed, and in that behalf, your petitioner then and there took the witness stand and demanded to be sworn as a witness in his own behalf, but the counsel for the Government objected, and the objection was by said Judge sustained, and he was not permitted to be sworn or to testify.

5.

That thereupon, then and there, your petitioner by his counsel stated to the Judge that he would prove, and then and there his said counsel offered to prove by your petitioner as a witness and by other witnesses then and there present, the following facts, which facts are true, that is to say: That the said Frank S. Royster did not on the 17th day of September, in the year 1903, in the City of New York, or at any other time or in any other place meet with the persons named in said indictment, or any other person or persons, to discuss, enter into, or make and further the objects of any agreement, com-
7 bination or conspiracy, nor did he meet with said Samuel T. Morgan and others as alleged in said indictment, or any of them, and that Frank S. Royster has not been within the State of Tennessee for the period of seven years next preceding the 14th day of July, 1906, and neither has he through himself, or through any agent, nor has any firm or corporation in which the said Royster is interested, or of which he is an officer, agent or employee, ever done any business of any kind in the State of Tennessee within seven years next preceding said 14th day of July, 1906, except to purchase phosphate rock from the owners of mines in Tennessee, nor did he by or through any attorney, agent, or representative do any of the aforesaid matters and things.

6.

That the United States Attorney, on behalf of the Government, then and there objected to the introduction or reception by the said Judge of the said evidence so offered on behalf of your petitioner, and to each and every part thereof, on the ground hereinbefore stated, which objection was then and there sustained by the Court, on the ground that the said certified copy of the said indictment so introduced on behalf of the Government, the identity of your petitioner as aforesaid being admitted by your petitioner as aforesaid, was conclusive evidence of the existence of every fact stated in the indictment, including the averments that the conspiracies alleged in the said indictment were engaged in in the Middle District of Tennessee, and that therefore said evidence or any evidence offered by and on behalf of your petitioner to controvert, contradict or disprove the averments of the said indictment in that behalf, or any or either of them, was incompetent and inadmissible; and the said Judge, then and there, on the grounds aforesaid, excluded and refused to receive said evidence so offered on behalf of your petitioner, or any part thereof, to which ruling of the
8 Judge, your petitioner then and there, by his counsel, duly excepted.

7.

That thereupon the said Judge, upon the complaint and upon the evidence so introduced for and on behalf of the Government as aforesaid, made and signed a certain order reciting his said rulings as aforesaid and ordering as in said order appears, which said order is as follows:

THE UNITED STATES OF AMERICA,
Eastern District of Virginia:

THE UNITED STATES
vs.
FRANK S. ROYSTER.

This is an application under the provisions of section 1014 of the United States Revised Statutes for a warrant for the removal of Frank S. Royster to the Middle District of Tennessee and comes before me as follows:—

The District Attorney for this District, together with Mr. E. T. Sanford, Counsel for the United States, presented to me, a verified complaint of Morgan Treat, United States Marshal for this District, with the certified copy of an indictment filed on May 25th, 1906, in the Circuit Court of the United States for the Middle District of Tennessee in the case of the United States *vs.* Virginia-Carolina Chemical Company and other defendants, including among such defendants the said Frank S. Royster.

Said complaint and copy of said indictment are made parts of this order.

Upon the exhibition of this indictment and affidavit and the *ex parte* motion of the counsel for the United States, I made an order for the arrest of said Frank S. Royster and his production
9 before me.

This order was duly executed by the said Marshal, who arrested the said Frank S. Royster and brought him before me in Richmond on this 14th day of July, 1906, as shown by his return. When the accused was so brought before me it was moved by the counsel for the United States that inasmuch as the indictment charged offenses against the United States triable in the Circuit Court of said United States for the Middle District of Tennessee, and the identity of the defendant was admitted, that an order be forthwith made for the commitment of said Frank S. Royster for trial before said Circuit Court.

This motion was made upon the certified copy of the indictment without any further testimony, the identity of the party arrested and brought before me as the Frank S. Royster mentioned in the indictment being admitted.

And thereupon the defendant, Frank S. Royster, offered himself as a witness in his own behalf, and being about to be sworn, the United States, by its counsel, thereupon objected to the witness being sworn, or to any testimony being given in

rebuttal of the indictment in these proceedings, on the ground that the identity of the defendant being admitted, inasmuch as the indictment on its face charges offenses against the United States committed and triable in the jurisdiction in which the defendant stands indicted, no evidence is admissible here to impeach the indictment, and the order of the commitment should be made without other proof.

The defendant's counsel thereupon offered to prove by the defendant, and other witnesses then and there present, that the Circuit Court for the Middle District of Tennessee had no jurisdiction over the person of said defendant touching the offense charged in said indictment, in that defendant and said other witnesses would, if permitted, testify that the said Frank S. Royster did not on the 17th day of September in the year 1903, in the City of New York,
10 or at any other time or in any other place meet with the persons named in the said indictment or any other person or persons to discuss, enter into, or make and further the objects of any agreement, combination or conspiracy, nor did he meet with said Samuel T. Morgan and others as alleged in said indictment, or any of them, and that Frank S. Royster has not been within the State of Tennessee for the period of seven years next preceding the 14th day of July, 1906, and neither has he through himself, or through any agent, nor has any firm or corporation in which the said Royster is interested, or of which he is an officer, agent or employee, ever done any business of any kind in the State of Tennessee within seven years next preceding said 14th day of July, 1906, except to purchase phosphate rock from the owners of mines in Tennessee. Nor has defendant done, or performed, or been engaged in, or a party to any agreement, combination or conspiracy in any other place or places at any other time or times whatsoever in said District.

Thereupon counsel for the Government renewed its objections as aforesaid.

After hearing counsel for both sides the Court announced its conclusions as follows:—

"The conclusion reached by the Court is that in a proceeding for the arrest and the removal of persons charged with a violation of the laws of the United States pursuant to section 1014 of the Revised Statutes of the United States, before a United States District Judge, sitting in the State of Virginia, in which State there *is* no longer exists the right of a preliminary examination upon a crime charged prior to the trial upon the merits, when said Judge is called upon to act as well in the matter of the apprehension of such persons, as in their removal to the jurisdiction in which they have been indicted,
11 that upon the Government's presentation of a sufficient indictment regularly found by a grand jury in a court of the United States, properly charging the commission of an offense within the district in which such indictment is found, coupled with proof of the identity of the person indicted, it is its duty to properly bail such person for appearance before the court in which he is indicted, or cause him to be removed thereto."

Therefore it was ordered that the testimony offered is inadmissible, and will not be received, and I therefore made the following order:

UNITED STATES OF AMERICA,
Eastern District of Virginia, sct:

The within named Frank S. Royster having been brought before me, and identified; and it appearing by a duly authenticated copy of an indictment that he stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled "The United States *vs.* Virginia-CarolinaChemical Company *et al.*," for violation of section one of the act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States, it is ordered that the said Frank S. Royster give bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial before said Court under the said indictment; or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee, to be there dealt with according to law.

Richmond, Va., July 14th, 1906.

(Signed) EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

12 And after said order had been made and the defendant declined to give bond, the counsel for the United States moved that the warrant do issue directed to the Marshal of this District for the imprisonment and removal of the said Frank S. Royster to the Middle District of Tennessee, and his delivery to the custody of the United States Marshal of that District.

On such motion counsel for the said Frank S. Royster objected and again offered the said Frank S. Royster as a witness, together with the other witnesses hereinbefore referred to, to establish the same matters and facts as hereinbefore stated with regard to the objection to the order for the commitment of the said Frank S. Royster, which testimony was again offered and was again objected to by the counsel for the United States on the same grounds above set forth, and on the further ground that these matters could not now be inquired of in this stage of the proceedings, and was again excluded by the Court, to all of which counsel for the said Frank S. Royster duly excepted and had the exceptions noted and entered.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

I therefore issued a warrant directed to the Marshal as follows:

Warrant of Imprisonment and Removal.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The President of the United States to the United States Marshal of the Eastern District of Virginia, Greeting:

Whereas it has been made to appear that Frank S. Royster stands indicted in the Circuit Court of the United States for the Mid-
13 dle District of Tennessee in cause No. 963 in said Court entitled: "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," for violation of section one of the act of Congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States; and whereas the said Frank S. Royster having been brought before me, and identified; and a certified copy of said indictment furnishing probable cause to believe him guilty as therein charged, and whereas it was thereupon ordered by me that said defendant give bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial under said indictment, or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee to be there dealt with according to law; and the said defendant having failed and refused to give bail as required, therefore;

You are hereby commanded in the name and by the authority of the said United States to imprison the said Frank S. Royster in accordance with law, and that with all convenient speed you remove him hence to the said Middle District of Tennessee and there surrender him to the Marshal of that District, there to be dealt with according to law.

Richmond, Va., July 14th, 1906.

(Signed) EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

Richmond, Va., July 14, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

14 8.

Your petitioner further says that he is advised, and he charges and submits, that under and by virtue of Clause 3, of Section 2, of Article 3, of the Constitution of the United States, and of the Sixth Amendment to the said Constitution, your petitioner is entitled to be tried and can only be indicted and tried for any alleged offenses against the laws of the United States, in the State and District in which the offense, which the indictment charges, was committed; that the said supposed offenses in the said indictment mentioned and charged, were not, nor was any or either of

them, committed in the said Middle District of Tennessee; that none of the alleged acts, transactions, matters or things which are in the said indictment mentioned or referred to as being and constituting the supposed engaging by this defendant in the said alleged conspiracies in the said indictment referred to, or any or either of them, were done or held or took place within the said Middle District of Tennessee, and no alleged act, transaction, matter or thing, in the said indictment mentioned or referred to as being the doing by this defendant of an act to effect the object of said conspiracy was done or held or took place within the Middle District of Tennessee; that he did not on the 17th day of September, 1903, in the City of New York, or at any other time, or in any other place, meet with the persons named in said indictment, or any other person or persons, to discuss, enter into, or make and further the objects of any agreement, combination or conspiracy, nor did he meet with said Samuel T. Morgan and others as alleged in said indictment, or any of them, and that he has not been within the State of Tennessee for the period of seven years next preceding the 14th day of July, 1906, and neither has he through himself, or through any agent, nor has any firm or corporation in which he is interested, or of which he is an officer, agent or employee, ever done any business of any kind in the State of Tennessee within seven years next preceding
15 said 14th day of July, 1906, except to purchase phosphate rock from the owners of mines in Tennessee; that he did not do, in the Middle District of Tennessee, any act in pursuance of the said alleged conspiracies in the said indictment mentioned, or any or either of them, in furtherance of the said alleged conspiracies in said indictment mentioned, or any or either of them, or to effect the object of the same, or as an act on the part of your petitioner of engaging in the same.

9.

That thereupon, the United States Attorney moved the commitment of your petitioner to the Marshal of the said District for removal to the Middle District of Tennessee for trial upon the indictment in the United States Circuit Court for said District, and the said Attorney for the United States thereupon made a motion before the Honorable Edmund Waddill, Jr., Judge, for the issuance of a warrant for the removal of your petitioner to the Middle District of Tennessee for trial as aforesaid in the United States Circuit Court for said District upon the said indictment, and the said motion was allowed, and said warrant was in pursuance thereof issued by the said Judge, and a copy thereof is embraced in the order of the said Judge hereinbefore recited as and made a part hereof. That thereupon the said Marshal of the Eastern District of Virginia, to whom the said warrant was directed, took your petitioner into custody upon the said warrant and now holds your petitioner thereunder and threatens to take and remove your petitioner to the Middle District of Tennessee, as directed by the said warrant and will do so, unless your Honor shall issue the writ of *Habeas Corpus* herein prayed for. Your petitioner further says that in case your pe-

titioner is removed under the said warrant to the said Middle District of Tennessee for trial upon said indictment and is there held
16 for trial and tried upon said indictment, your petitioner will not be tried within the District in which the said alleged offenses charged in the said indictment were committed, as required by the Sixth Amendment to the Constitution of the United States, and by Clause 3, of Section 2, of Article 3 of said Constitution, and will be tried in violation of his rights under said provisions of the said Constitution. Your petitioner further says that he is advised, and he charges, that the said indictment does not charge the commission by your petitioner of any offense against the laws of the United States, and that same is in that behalf insufficient and void.

10.

That the imprisonment and detention of your petitioner is without authority of law, and the said proceedings before said United States District Judge are illegal and the said warrant of removal was illegally issued and in violation of Article 3, Section 2, of the Federal Constitution, and of the Sixth Amendment to the said Constitution; and that then and there by the said rulings of the said District Judge, in the exclusion of the said evidence and in holding that the said certified copy of the indictment was conclusive evidence as aforesaid, and in refusing to permit your petitioner to introduce any evidence on his behalf, as aforesaid, your petitioner was deprived of rights secured to him by the said provisions of the said Constitution and by section 1014 of the Revised Statutes, and was and is by said Morgan Treat, United States Marshal, deprived of his liberty without due process of law.

Wherefore your petitioner prays that a writ of *Habeas Corpus* be issued, directed to the said United States Marshal of the Eastern District of Virginia, who has your petitioner in custody, demanding him to bring the body of your petitioner before this Court forthwith; and further that a writ of *Certiorari* be directed to the said
17 Honorable Edmund Waddill, Jr., Judge as aforesaid, commanding that he return all proceedings against this petitioner to this Court forthwith, for such action as may be proper in the premises.

FRANK S. ROYSTER.

UNITED STATES OF AMERICA,
Eastern District of Virginia, City of Richmond, ss:

Frank S. Royster being duly sworn, deposes and says that he has read the foregoing petition, and knows the contents thereof, and that the same is in all respects true.

FRANK S. ROYSTER.

Sworn and subscribed to before me this 14th day of July, 1906.

JOSEPH P. BRADY,
Clerk U. S. Circuit Court.

CADWALLADER J. COLLINS,
W. L. WILLIAMS,
Attorneys for Petitioner.
JOHN J. VERTREES,
JAMES C. BRADFORD,
Counsel.

18

EXHIBIT A.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

On this 14th day of July, A. D. 1906, at the City of Richmond, in the said District, before the Honorable Edmund Waddill, Jr., Judge of the District Court of the United States of America for the said District, comes Morgan Treat, United States Marshal in and for the said District, and upon his oath complains and says: that he has good cause to believe and does firmly believe that Frank S. Royster of Norfolk, Virginia, stands indicted by the grand jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said Frank S. Royster on the eighth day of July in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, being during said period President of the F. S. Royster Guano Company, a corporation existing under and by the laws of the State of Virginia, did in the said Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said Frank S. Royster did unlawfully conspire with divers other persons and corporations to commit an offense against the United States, to-wit, the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States, all as more fully set out in an indictment filed in the said Circuit Court of the United States in and for the Middle District of Tennessee on May 25th,

19 1906, in cause No. 963, entitled "The United States *vs* Virginia-Carolina Chemical Company *et al,*" a certified copy of which indictment is hereto attached and made a part of this complaint; and complainant therefore charges that the said Frank S. Royster did commit the said offenses against the United States in manner and form as set forth in said indictment.

Complainant furthermore avers upon information and belief that in pursuance of an order of said Circuit Court of the United States for the Middle District of Tennessee a bench warrant has been issued from said Court for the arrest of said Frank S. Royster and delivered to the Marshal of said Court, who, after due search, has returned said warrant "not found" in said Middle District of Tennessee; and that said Frank S. Royster is now believed to be within the Eastern District of Virginia, of which District he is a resident.

Wherefore this complainant prays that the said Frank S. Royster may be arrested and imprisoned and removed or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee, and further dealt with according to law.

(Signed) MORGAN TREAT, *Marshal.*

Subscribed and sworn to before me by the above named Morgan Treat the day and year first above written.

EDMUND WADDILL, JR.,
U. S. District Judge.

20 EXHIBIT B

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

To the Marshal of the Eastern District of Virginia, Greeting:

Whereas complaint in writing on oath, has been made to me charging that Frank S. Royster of Norfolk, Virginia, stands indicted by the grand jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said Frank S. Royster on the eighth day of July, in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, did in the Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several State- of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on the said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said Frank S. Royster did unlawfully conspire with divers other persons and corporations to commit an offense against the United States, to-wit, the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States; and application has been made to me that the said Frank S. Royster may be arrested and imprisoned and removed or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee;

Now, therefore, you are hereby commanded to arrest the said Frank S. Royster, if he be found within your said District, and bring him forthwith before me at my Chambers in Richmond, in order that he may be dealt with according to law.

EDMUND WADDILL, JR.,
District Judge.

Richmond, July 14th, 1906.

21 Pursuant to the within writ, I have taken the defendant, Frank S. Royster, into custody, and now have him before Hon. Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia.

MORGAN TREAT,
United States Marshal.

July 14th, 1906.

22 EXHIBIT C.

In the Circuit Court of the United States of America for the Middle District of Tennessee, of the April Term, in the Year of Our Lord Nineteen Hundred and Six.

MIDDLE DISTRICT OF TENNESSEE, *sct:*

The grand jurors for the United States of America, inquiring for the Middle District of Tennessee, upon their oath present, that before and on the eighth day of July, in the year of our Lord nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year of our Lord nineteen hundred and five, the following named corporations, respectively organized and existing under and authorized by the laws of the several States and of the foreign country here named in connection with them, and hereafter in this indictment called corporation defendants, to wit, the Virginia-Carolina Chemical Company, of New Jersey, Armour and Company, of Illinois, the Acme Manufacturing Company, of North Carolina, the Alabama Chemical Company, of New Jersey, the Anderson Phosphate & Oil Company, of South Carolina, the Ashepoo Fertilizer Company, of South Carolina, the Blackshear Manufacturing Company, of Georgia, the Etiwan Fertilizer Company, of South Carolina, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, The Furman Farm Improvement Company, of Georgia, the Goulding Fertilizer Company, Limited, of Great Britain and Ireland, The Goulding Fertilizer Company, of Florida, the Gulfport Cotton Oil, Fertilizer & Manufacturing Company, of Georgia, the Home Mixture Guano Company, of Georgia, the Jackson Fertilizer Company, of Mississippi, the Marietta Fertilizer Company, of Georgia, the Meridian Fertilizer Factory, of Mississippi, the National Fertilizer Company, of Tennessee, the New Orleans Acid and Fertilizer Company, of New Jersey, the Old Dominion Guano Company, of Georgia, the Planters Chemical Company, of Alabama, the
23 Read Phosphate Company, of West Virginia, the F. S. Royster Guano Company, of Virginia, the Savannah Guano Company, of Georgia, the Southern States Phosphate and Fertilizer Company, of Georgia, the Standard Chemical & Oil Company, of Alabama, the Standard Guano and Chemical Manufacturing Company, of Louisiana, Swift & Company, of Illinois, the Tennessee Chemical Company, of Tennessee, and the Tennessee Valley Fertilizer Company, of Alabama, and certain firms, to wit, the firm of A. D. Adair and McCarty Brothers and the firm of Wilcox, Ives & Company, did carry on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereafter in this indictment called the States of the conspiracy, as wholesale dealers in complete and alkaline fertilizers and in acid phosphates, nitrates, and potash salts suitable for fertilizers, which then were useful and valuable

articles of merchandise, indispensable for use on the soil of the said States of the conspiracy in order that the staple crops of those States might be raised therefrom; that the following named persons, hereafter in this indictment called individual defendants, to wit, Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, of the said Virginia-Carolina Chemical Company, and J. Rice Smith, agent and manager of the said Virginia-Carolina Chemical Company, and president of the Georgia Chemical Works hereinafter mentioned, Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, Fred G. Brown, president and treasurer of the said Anderson Phosphate & Oil Company, Frank Burbidge, president, and William J. McCormack, treasurer, of the said Etiwan Fertilizer Company, George Braden, president of the said Federal Chemical Company, of Delaware, and also of the said Federal Chemical Company, of Kentucky, Augustus D. Adair and James D. McCarty, officers and agents of the said Furman Farm Improvement Company and members of the said firm of A. D. Adair and McCarty Brothers, William DeC. Kessler, secretary and treasurer of the said Goulding Fertilizer Company, Limited, James G. Tinsley, president of the said Marietta Fertilizer Company and vice-president of the said Tennessee Chemical Company, William D. Rhea, general manager of the said National Fertilizer Company, William L. Peel, president of the said Old Dominion Guano Company, Abram C. Read, vice-president and general manager, and Isaac Mayo Read, agent, of the said Read Phosphate Company, Frank S. Royster, president, and Charles F. Bur-
24 roughs, vice-president, of the said F. S. Royster Guano Company, A. J. Ives, whose Christian name is to the said grand jurors unknown, secretary and treasurer of the said Savannah Guano Company and a member of the said firm of Wilcox, Ives & Company, T. Porter Fleming, vice-president of the said Southern States Phosphate and Fertilizer Company, and T. Garland Tinsley, president and treasurer of the said Tennessee Chemical Company, in their said several capacities as officers, managers, agents, and attorneys of the said corporation defendants and members of the said firms, and on behalf of those corporations and firms, during the period of time in this indictment first aforesaid, did carry on the business aforesaid; that in so carrying on the said business the said defendants, that is to say, the said corporation and individual defendants, did sell and deliver large quantities of the said merchandise within the limits of the said States of the conspiracy from the respective places of business of the said corporation defendants and the said firms, located at different points within those States, to retail dealers in and consumers of such merchandise, in such States respectively, and did also ship large quanti-es of the same from their respective places of business, located in the said States of the conspiracy and also in the States of Virginia, Illinois, and Kentucky, into and through other of the said States than those in which their said places of business were located; that in so carrying on the said busi-

ness and shipping the said merchandise from one of the said States into and through another or others thereof, the said defendants, during the period aforesaid, were engaged in trade and commerce among the States of this Union within the meaning of the Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in so carrying on the said business, trade and commerce, the said Virginia-Carolina Chemical Company and the said Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, and J. Rice Smith, agent and manager, of the said Virginia-Carolina Chemical Company, did make use of and operate a portion of their said business, trade and commerce through each of certain other corporations, to wit, the American Fertilizer Company, of Virginia, the Birmingham Fertilizer Company, of Alabama, the Coweta Fertilizer Company, of Georgia, the Georgia Chemical Works, of Georgia, the Navassa Guano Company, of North Carolina, of either the whole or a majority of the capital stock of which said corporations respectively the said Virginia-Carolina Chemical Company was the owner;

25 that in so carrying on the said business, trade and commerce, the said Armour and Company and the said Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, did make use of and operate all of their said business, trade and commerce through a certain other corporation called the Tuscarora Fertilizer Company, of New Jersey, and a certain trade name, to wit, the trade name of Armour Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Furman Farm Improvement Company and the said firm of A. D. Adair and McCarty Brothers did make use of and operate a portion of their said business trade, and commerce under the trade name of Chickamauga Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Federal Chemical Company, of Delaware, and the said Federal Chemical Company of Kentucky, did make use of, and operate a portion of their said business, trade and commerce through, the names of Century Phosphate Company, Fox Chemical Company, Branch Globe Fertilizer Company, Branch and Tennessee Phosphate Company; that in so carrying on the said business, trade and commerce, the said National Fertilizer Company did make use of, and operate a portion of its said business, trade and commerce through, the corporate name of American Guano Company and the trade name of Nashville Guano Company; that in so carrying on the said business, trade and commerce, the said Read Phosphate Company did make use of, and operate a portion of its said business, trade and commerce through the corporate name of Empire Guano Company; that in so carrying on the said business, trade and commerce, the said F. S. Royster Guano Company did make use of, and operate a portion of its said business, trade and commerce through the trade name of Atlantic Chemical Company and the corporate name of Columbia Guano Company; that in so carrying on the said business, trade and

commerce, the said Swift and Company did make use of, and operate the whole of its said business, trade and commerce through, the trade name of Swift Fertilizer Works; and that in so carrying on the said business, trade and commerce, the said Tennessee Chemical Company did make use of, and operate a portion of its said business, trade and commerce through, the trade name of Continental Fertilizer Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that of the total volume of such business, trade and commerce then so being carried on by the said defendants and their competitors, the said defendants together had and controlled the principal part, that is to say, ninety per centum thereof; and
26 that because the said corporation defendants and the said firms were in fact separate and distinct from each other, they should have conducted their interstate trade and commerce strictly in competition with each other, during the said period, and then would have so conducted the same but for the unlawful conspiracy in restraint of the said business, trade and commerce in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, at and within the said Middle District of Tennessee, in violation of the provisions of said section one of the said Act of Congress, unlawfully did knowingly engage in a conspiracy in restraint of the said business, trade and commerce, so then being carried on by them in the manner aforesaid, whereby the said business, trade and commerce was restrained in the several ways and by the several means now here set forth and described, that is to say:

Competition as to the prices at which the said merchandise was sold and delivered by the said corporation defendants and the said firms in the said States of the conspiracy, which before the period of time in this indictment first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was prevented and destroyed by the said defendant from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them styled "current, reasonable market prices," for the said merchandise so sold and delivered by the said corporation defendants and the said firms in those States, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so fixed and caused to be fixed; which said uniform and non-competitive prices were prices greatly in excess of the prices which but for the said unlawful conspiracy would at such times have prevailed for the said merchandise in the said business, trade and commerce, and were prices therefore unreasonable, and were a tax on the people of the said States of the said conspiracy amounting to a large sum of money, to wit, four million dollars, annually during the continuance of the same.

For and on account of such quantity of the said merchandise as was sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts allotted and caused

to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and
27 delivered in excess, was, by the corporation defendants and firms so selling and delivering the same, paid into a common fund, held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, compensated, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as sold and delivered less than the amounts so allotted to them respectively, so it was not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy that each of the said corporation defendants and of the said firms also paid into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment to be the absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm, in disposing of its said allotment in carrying on the said business, trade and commerce, on its part faithfully should exercise every reasonable effort and due business diligence to maintain the prices so fixed and caused to be fixed as aforesaid and pay into the said fund the sum accruing to the same on account of its said excess sales, in which case an equal amount was returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also made uniform and non-competitive as between all of the said corporation defendants and the said firms, in the said business, trade and commerce, among the said States of the conspiracy.

As a convenient intermediary and common agent between the said corporation defendants and the said firms, respectively and as a means of securing their co-operation in carrying out the said unlawful conspiracy, the said defendants made use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company, Limited, was also allowed and required to collect, hold, use and distribute the said fund
28 arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that, in pursuance of the said unlawful conspiracy,

and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of September, in the year nineteen hundred and three, during the period of time aforesaid, at and within the City of New York, in the State of New York, unlawfully did knowingly deposit with the Continental Trust Company, of the said City of New York, the sum of twenty-six thousand dollars, in connection with the purchase *of* by the said trust company on behalf of the said Virginia-Carolina Chemical Company, and in the name of one Montrose Stuart, a clerk in the office of the said trust company, of twenty-six hundred shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Samuel T. Morgan, on the seventh day of October, in the same year nineteen hundred and three, and during the period of time aforesaid, at and within the said city of New York, in the State of New York, unlawfully did deliver to the said William DeC. Kessler, Vice-President of the said Colonial Development Company, Limited, three checks drawn by the said Virginia-Carolina Chemical Company, one upon the National City Bank, of New York City aforesaid, for eighty thousand dollars, another on the Bank of America, of New York City aforesaid, for fifty thousand dollars, and the other on the National Park Bank, of New York City aforesaid, for thirty-five thousand and four hundred and sixty-eight dollars, aggregating one hundred and sixty-five thousand and four hundred and sixty-eight dollars, as and for a payment, by the said Virginia-Carolina Chemical Company, to the said Colonial Development Company, Limited, of twenty cents a ton on its allotment under the said unlawful conspiracy; he the said Samuel T. Morgan, when and where he so as aforesaid delivered the said checks to the said William DeC. Kessler, well knowing the character and purpose of the same, and well knowing that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as acts on their parts respectively of engaging in the same, the said Samuel T. Morgan,
29 Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, on the seventeenth day of September, in the year nineteen hundred and three, and during the period aforesaid, at the said City of New York, in the said State of New York, unlawfully did meet together to discuss and further the object of the said unlawful conspiracy; they the said Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred G. Brown,

Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, when and where they so as aforesaid met together, each well knowing the character and purpose of the said meeting, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank E. Wilcox, on the first day of November, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did deliver to one W. W. Perkins, Secretary of the said American Fertilizing Company, a certain document, too voluminous to be here set forth, stating certain prices and terms of sale, fixed in pursuance of the said unlawful conspiracy, for the said fetilizer merchandise, in the States of North Carolina, South Carolina, Georgia, Florida, Alabama and Tennessee, for the spring season of the year nineteen hundred and four; he the said Frank E. Wilcox at the time and place when and where he so as aforesaid delivered the said document to the said W. W. Perkins, well knowing the character of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, and during the period of time aforesaid, at the town of Decherd, in the said Middle District of Tennessee, by and through one
30 F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, and during the period aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, and during the period of time aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at the City of Nashville, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, a certain notice of shipment, partly written and partly printed, in the words and figures following, that is to say:

"The Armour Fertilizer Works
Owned and operated by
Armour & Company.

Prudential Building,
Atlanta, Ga.

Duplicate.
To be Mailed with Bill of Lading to Customer.

No. 612
March 10", 1905.

31 We have this day shipped from Nashville, Tenn. storage

To Bramlitt Hdw Co.
Corinth, Miss.

Charge to S. D. Bramlitt. Address same.

No. Bags.	Weight of bags.	Brand.	Tons.
400	100	King Cotton 8.2.2	20

Order No. 4613.

Bill of lading herewith. Invoice will be mailed from Chicago.
Above quantities shipped 3 10 1905. Freight Terms.....
Car No. 13619. Via L. & N.
Charges prepaid $48.00.

THE ARMOUR FERTILIZER WORKS,
Per ALEX. LESLIE."

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Austin B. Carpenter, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Assistant Secretary of the said Colonial Development Company, unlawfully did sign his name, to wit, "A. B. Carpenter, Asst. Secy." on the face of a certain stock certificate, to wit, certificate No 28, showing the ownership by one Thomas M. Green of fifty-one shares of the capital stock of the said Colonial Development Company; he the said Austin B. Carpenter, at the time and
32 place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his said act to be done in pursuance and to effect the object of the said conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles H. MacDowell, on the twelfth day of January, in the year nineteen hundred and five, and during the period of time aforesaid, at and within the city of Chicago, in the State of Illinois, unlawfully did sign his name, to-wit, "C. H. MacDowell," under the name of the Armour Fertilizer Works, and after the word "by" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Armour and Company, under the trade name of "Armour Fertilizer Works," offered to furnish and deliver at Corinth, in the State of Mississippi to one S. D. Bramlitt, twenty tons of the fertilizer merchandise aforesaid; he the said Charles H. MacDowell, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of gaging in the same, the said Alabama Chemical Company, on the the first day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the city of Wilmington, in the State of North Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of six hundred and twenty

dollars for sixty-two shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Alabama Chemical Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Montgomery, in the State of Alabama, unlawfully did knowingly deliver its certain check drawn upon the Merchants and Planters-Farmers National Bank, Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of William DeC. Kessler, as payment for forty-two shares of the capital stock of the said Colonial Development Company, Limited;

33 And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Anderson Phosphate and Oil Company, on the twenty-ninth day of August, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Anderson, in the State of South Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of five hundred and eighty dollars for fifty-eight shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly buy from the Carolina Savings Bank, Charleston, South Carolina, a draft upon the Citizens National Bank, of New York City, for the payment of the sum of seven thousand nine hundred and forty-nine dollars and forty-three cents to the order of one Frank E. Taylor, Vice-President and General Manager of the said Ashepoo Fertilizer Company;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and *and* during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly cause the said Frank E. Taylor to endorse the check last above mentioned payable to the order of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Blackshear Manufacturing Company, on the seventeenth day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Blackshear, in the State of Georgia, unlawfully did knowingly deliver to the Atlantic Coast Line Railroad Company six tons of the fertilizer merchandise aforesaid, consigned and to be shipped

to the firm of E. J. Blume & Company, at Live Oak, in the State of Florida;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Etiwan Fertilizer Company, on the fourteenth day of December, in the year nineteen hundred and
34 three, and during the period of time aforesaid, at and within the town of Cairo, in the State of Georgia, by and through one P. H. Seabrook, its agent, unlawfully did knowingly offer and agree to furnish and deliver to the firm of Wight Brothers, of Cairo aforesaid, thirty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank Burbidge, on the first day of July, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Charleston, in the State of South Carolina, having then and there in his hands a certain check, dated the thirtieth day of June, in the same year nineteen hundred and four, drawn by the said Alabama Chemical Company upon the Continental National Bank of Chicago, for the payment of eleven hundred and forty-two dollars and ninety-seven cents to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Pay to order of People's National Bank, Colonial Development Co., Ltd., F. Burbidge, Pres."; he the said Frank Burbidge then and there, to wit, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William J. McCormack, on the ninth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, having then and there in his hands a certain check dated the fifth day of September, in the same year, drawn by the said New Orleans Acid & Fertilizer Company, upon the Louisiana National Bank of New Orleans, for the payment of seven hundred and fifty dollars to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Colonial Developm't Co., Frank Burbidge, Sec. & Treas., per Wm. J. McCormack"; he the said William J. McCormack, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of en-

gaging in the same, the said Federal Chemical Company, of
35 Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the said State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, and during the period of time aforesaid, at Springfield afore-
36 said, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff & Williams, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Goulding Fertilizer Company, Limited, on the twenty-fifth day of November, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the

town of Cullman, in the State of Alabama, by and through one W. E. Craig, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one John Sutterer, at Cullman aforesaid, three hundred and seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the sixth day of September, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Pensacola, in the State of Florida, having then and there in his hands a certain check, dated the fifth day of September, in the same year nineteen hundred and three, drawn by the said Alabama Chemical Company upon Merchandise Merchants and Planters-Farley National Bank of Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of W. DeC. Kessler, unlawfully did sign his name, to wit, "W. DeC. Kessler," upon the back of the said check next below the written words "Pay to the order of Colonial Development Co."; he the said William DeC. Kessler then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the back of the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the said fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Vice-President of the said Colonial Development Company, unlawfully did sign his name, to wit, "W. DeC. Kessler, V. P." on the face of the said stock certificate in the name of Thomas M. Green; he the said William DeC. Kessler, at the time and place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his act to be done in pursuance and to effect the object of
37 the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Gulfport Cotton Oil Fertilizer and Manufacturing Company, on the twenty-seventh day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-four hundred dollars for and in respect of twelve thousand tons of the fertilizer merchandise aforesaid, allotted to the said Gulfport Cotton Oil, Fertilizer and Manufacturing Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Home Mixture Guano Company, on a day in the year nineteen hundred and three to the said grand jurors

unknown, and during the period of time aforesaid, at and within the City of Columbus, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Jackson Fertilizer Company, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Jackson, in the State of Mississippi, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Marietta Fertilizer Company, on the twenty-first day of July, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by and through one L. W. Reeves, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one James A. Boyd, at Jonesboro aforesaid, seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said James G. Tinsley, on the
38 third day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Nashville, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley; he the said James G. Tinsley, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Meridian Fertilizer Factory, on the seventh day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Cullman, in the State of Alabama, by its agent E. L. Robbins, unlawfully did knowingly offer to furnish to C. A. Steifelmeyer one hundred and fifty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said National Fertilizer Company, on the

second day of March, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge; he the said William D. Rhea, then
39 and there, to wit, at the time and place when and where he so directed and required the said E. W. Connell to sign his name as aforesaid to the said check, well knowing the nature and contents of the said check, and that his said direction and requirement were in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid; he the said William D. Rhea then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the said document, well knowing the character of the same, and well knowing his said act to be one done in pursuance of and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said New Orleans Acid & Fertilizer Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did

knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars for seventy-five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Old Dominion Guano Company, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-six hundred and twenty dollars, for and in respect of thirteen thousand one hundred tons of the fertilizer merchandise aforesaid, allotted to the said Old Dominion Guano Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William L. Peel, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did sign his name, to wit, "W. L. Peel, Prest.," to a certain check, to wit, a check drawn by the Maddox-Rucker Banking Company upon the National Park Bank, New York, for the payment of twenty-six hundred and twenty dollars to the order of the said Colonial Development Company, Limited; he the said William L. Peel, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Planters Chemical Company, on the thirtieth day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Talladega, in the State of Alabama, unlawfully did knowingly pay the said Colonial Development Company, Limited, the sum of fifty dollars for five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Read Phosphate Company, on the fifth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Hartselle, in the State of Alabama, unlawfully did knowingly offer to sell and deliver to one S. E. Stewart, at that place, forty to fifty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and

three, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too
41 voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid; he the said Abram C. Read, then and there, to wit, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved, Nashville Tenn. Dec. 6 1904," and above the word "Manager," upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof, offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid; he the said Abram C. Read then and there, to wit, at the time and place when and where he so as aforesaid signed his name to the last mentioned document, well knowing the character and contents of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said F. S. Royster Guano Company, on the thirtieth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine thousand three hundred and fourteen dollars and seventy-four cents, on account of such merchandise sold and delivered by the said F. S. Royster Guano Company in excess of its allotment under the aforesaid unlawful conspiracy;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles F. Burroughs, on the twenty-fifth day of March, in the year nineteen hundred and four,
42 and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did sign

his name, to wit, "C. F. Burroughs," under the word "countersigned" and above the words "Vice-President" upon the face of a certain document, partly written and partly printed, too voluminous to be here set forth in full, wherein and whereby the said F. S. Royster Guano Company and he the said Charles F. Burroughs, as Vice-President thereof, offered to sell to one J. W. Carter, and to deliver to him at Maxton, in the State of North Carolina, ten tons of the fertilizer merchandise aforesaid; he the said Charles F. Burroughs, at the time and place when and where he so as aforesaid signed his name to the said document, well knowing the character and contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Savannah Guano Company, on the second day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did knowingly pay to the said Frank Burbidge the sum of nine hundred and forty dollars for ninety-four shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said A. J. Ives, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did sign his name, to wit, "A. J. Ives, Secty. & Treas." to a certain check, to wit, a check drawn by the Savannah Guano Company upon the Merchants National Bank, Savannah, Georgia, for the payment of three thousand one hundred and forty dollars to the order of New York Exchange; he the said A. J. Ives, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Southern States Phosphate and Fertilizer Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of the time afore-
43 said, at and within the City of Augusta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine hundred and sixty dollars for ninety-six shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Chemical and Oil Company, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the

town of Troy, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand dollars for and in respect of one-half of forty thousand tons of the fertilizer merchandise aforesaid allotted to the said Standard Chemical and Oil Company, as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Guano and Chemical Manufacturing Company, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand seven hundred and seventy-four dollars and seventy-seven cents as a partial payment for and in respect of the fertilizer merchandise aforesaid, allotted to the said Standard Guano and Chemical Manufacturing Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Swift & Company, on the first day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by its agent, J. Z. Elliott, unlawfully did knowingly offer to furnish to one W. P. Diehl thirty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

And that, further in pursuance of the said unlawful con-
44 spiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes & Bro., at Oxford, Alabama, a certain letter of the tenor following, to wit:

T. G. Tinsley, Pres't & Treas. Allen Hardison, Sec'y.

Tennessee Chemical Company, Manufacturers and Importers of Ox Fertilizers.

NASHVILLE, TENN., *May* 17–'05.

Messrs. D. P. Haynes & Bro., Oxford, Ala.

DEAR SIRS: I am in receipt of your favor of the 16th and beg to state we could not allow any discount further than the 5 % for cash

settlement. We will be glad to have you settle in cash on this basis if you desire to do so, but are sorry to state we are not in a position to offer you any further discount.

Yours truly, T. G. TINSLEY, *President;*

he the said T. Garland Tinsley then and there, to wit, at the time and place when and where he so as aforesaid caused the said letter to be written and sent as aforesaid, well knowing that the same was so written and sent in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part in engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Company, James G. Tinsley. By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee
45 Chemical Company upon the Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley; he the said T. Garland Tinsley, at the same time and place when and where he so as aforesaid wrote the said endorsement on the back of the said check, well knowing the contents of the same, and that his said act was done in pursuance of and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Valley Fertilizer Company, on the second day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Florence, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars, as a partial payment for and in respect of fertilizer merchandise, aforesaid, allotted to the said Tennessee Valley Fertilizer Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on their parts respectively, of engaging in the same, the said Frank Burbidge, Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson, during the period of time aforesaid, at the City of New York, in the State of New York, the City of Washington, in the District of Columbia, Old Point Comfort and Hot Springs, in the State of Virginia, St. Augustine, in the State of Florida, and French Lick Springs, in the State of Indiana, unlawfully did as officers, directors and attorney of the said Colonial Development Company, Limited,

meet together for the purpose of discussing and attending to the affairs of the said Colonial Development Company, Limited; they the said Frank Burbidge, Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson when and where they so met together aforesaid, well knowing the purpose of such meetings, and well knowing their acts in the premises to be acts in pursuance and to effect the object of the said unlawful conspiracy, and that the same were done as acts on their parts respectively of engaging in the said unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, during the period of time aforesaid, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form aforesaid, unlawfully did engage in a conspiracy in
46 restraint of trade and commerce among the several States;
Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

Second Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the first count described, and were so engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord, nineteen hundred and three at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the grand jurors unknown, and engage in a conspiracy, among themselves and with such other unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid; which said unlawful conspiracy in this count mentioned then and there was a conspiracy for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described; that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the

said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing and causing to be fixed, uniform and non-competitive prices, by them to be styled "current, rea-
47 sonable market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such times prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum ther-of during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be the absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its excess

sales, in which case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of pay-
48 ment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their cooperation in carrying out the said unlawful conspiracy, the said defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, and as being acts on the part of the said corporation and individual defendants respectively of engaging in that conspiracy, are now here in this count charged to be acts by the same corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned, and to have been acts on the part of the said corporation and individual defendants respectively of engaging in the last-named unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a con-
49 spiracy in restraint of trade and commerce among the several States; against the peace and dignity of the said United

States, and contrary to the form of the statute of the same in such case made and provided.

THIRD COUNT.

And the grand jurors, aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the said first count described, and so were engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the said United States, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the said United States, to wit, the offense of engaging in a combination, among themselves and with such other unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid, which said unlawful conspiracy in this count mentioned then and there was a conspiracy to engage in a combination for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described, that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and com-
50 merce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them to be styled "current, reasonable market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be

prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such times prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful combination and ninety per centum thereof during the second year; it being a further element of the said unlawful combination in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on the said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the
51 same on account of its excess sales, in which case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their cooperation in carrying out the said unlawful combination, the said defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and

the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful combination; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, are now here in this count charged to be acts by the said corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy to commit an offense against the said United States: Against
52 the peace and dignity of the said United States; Against the peace and dignity of the said United States, and contrary to the form of the statute in such case made and provided.

Fourth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names

and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State, but by way of and partly through another State, and were severally engaged both in local com-
53 merce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the aforesaid business and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section one of the said Act of Congress, approved July 2, 1890, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, The Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company of Delaware, the Federal Chemical

Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count,
54 to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly engage in a conspiracy in restraint of commerce among the several States, to wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, whereby the said commerce was restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise which were maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the period of such unlawful conspiracy, and greatly in excess of those prices which would have otherwise prevailed in the said States during the period of such unlawful conspiracy, and were therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby earnest money was given to secure the maintenance of such prices and compensation was made to those losing volume of business by reason of maintaining such prices, that is to say:

There was from time to time allotted to each of said corporation defendants and firms an amount of tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms paid into a common fund the sum

of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sums becoming due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which faithfully maintained such uniform and non-competitive prices and failed to make sales
55 and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but sold and delivered through itself and its subsidiary companies a minimum amount thereof required as a guarantee of good faith, received from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid fell short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies made such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, as a penalty upon such excess sales, paid into such common fund like amounts per ton on the said respective kinds of fertilizers, divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means whereby said unlawful conspiracy was effected, a corporation of Ontario, Canada, whose stock was apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was the common fund aforesaid into which was paid the earnest money and penalties on excess sales aforesaid, and from which was paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which the same was operated and directed.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that within the period aforesaid of said unlawful conspiracy in this count of this indictment mentioned, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and did do and perform such acts as acts on their respective parts of engaging in the said unlawful conspiracy in this count of this indictment mentioned, and that each of such defendants at the time and place when and where such defendants did and performed the acts hereinafter so set forth in connection with such defendant respectively, then

and there well knew the character of such act and that such
56 act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, and as an act on the part of such defendant in engaging in the same, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year, nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the
object of the same, the said Armour and Company, on the
57 tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chatta-
58 nooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the

County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit,
59 "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Ten-

nessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec. 6 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abraham C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P.
60 Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said corporation and individual defendants, during the period of time aforesaid, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

Fifth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the

first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and
61 through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the several States of the conspiracy and the said States of Virginia, Illinois and Kentucy, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commence against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, approved July 2, 1890, the said corporation defendants named in the said first count, to wit, the Virginia-Caro-
62 lina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, and engage in a conspiracy among themselves and with such other unknown corporations and persons, in restraint of commerce among the several States, to-wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, by which unlawful conspiracy said commerce was to be restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the

various points of delivery in the said States of the conspiracy,
63 which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy, and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices, that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to make sales and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose
64 treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary and

common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful conspiracy was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that such act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

65 In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one

Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said consiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company,
66 on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Ten-

nessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle
67 District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his, the said E. W. Connell's name as such Treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fer-

tilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn., Dec. 6 1904"
68 and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he, the said Abram C. Read as Manager thereof offer-d to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee

Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

69 SIXTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were

severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress approved July 2, 1890, and entitled "An Act to protect
70 trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and in the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section 5440 of the Revised Statutes of the United States, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William
71 J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Wil-

liam D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the United States, to wit, to engage in a combination in restraint of commerce among the several States, namely, a combination in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, and did then and there so conspire to commit the aforesaid offense by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy, and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices; that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to
72 make sales and deliveries of such merchandise through itself and its subsidiary — amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment,

as aforesaid; and on the other hand, each of said corporation defendants and firms which, through itself and its subsidiary companies, should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful combination was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid, the corporation defendants and individual defendants, hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that such act was done in pur-
73 suance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and

four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at West
74 Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid,

consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Arndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day

and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D.
76 Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec. 6 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes

and Bro.," at Oxford, Alabama, that certain letter of the date
77 set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley, By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did conspire to commit an offense against the United States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

ABRAM M. TILLMAN,
United States Attorney.

(Endorsed as follows:) No. 963. United States Circuit Court, Middle District of Tennessee. *The United States vs. Virginia-Carolina Chemical Company et als.*

Indictment for violating Act of Congress approved July 2, 1890, and entitled "An Act to Protect Trade and Commerce against unlawful restraints and monopolies," and Section 5440 R. S. U. S.

A True Bill. Robert Q. Stewart, Foreman of the Grand Jury.

Names of Witnesses Sworn and Examined Before the Grand Jury.

J. C. Adams, Henry E. Ahern, Lee Ashcraft, Eugene Atkinson, N. E. Barker, W. F. Barrett, James C. Beck, J. M. Berry, W. W. Bird, L. W. Botts, Clarence Braden, S. D. Bramlitt, A. P. Brantley,
B. D. Brantley, Dewitt Brown, H. C. Brown, Arthur Bussey,
78 Hezekiah Bussey, E. J. Blume, James A. Boyd, William F. Burns, Oscar Bright, J. W. Carter, B. G. Clark, C. W. Comes, E. W. Connell, Charles Earle Currie, R. L. Davis, Joseph Denee, W. P. Diehl, A. M. Dobbs, John V. Dobson, C. H. Drayton, W. L. Dumas, J. B. Duncan, S. Eastland, T. B. Edwards, Culpepper Exum, H. C. Fischer, J. B. Fiser, Albert French, C. A. Gambrill, A. H. George, John E. Gibbs, William Gilchrist, James M. Goldsmith, A. A. Green, E. P. Grice, W. A. Hansel, G. A. Harrington, H. J. Harby, Allen Hardison, L. C. Hayne, J. L. Haynes, D. P. Haynes, R. W. Henderson, P. W. Hendricks, E. R. Hodgson, junior, E. R. Hodgson, senior, J. L. Horn, W. E. Hudson, T. J. Hunt, R. H. John-

ston, T. V. Kessler, E. M. Kirk, Henry Kirn, H. L. Law, Alexander Leslie, J. A. Lindsey, W. Hampton Logan, Harry Luck, John A. Lewis, W. F. McKenzie, Robert F. Maddox, H. W. Malloy, E. R. Manning, H. L. Milligan, J. Allen Moore, M. B. Neece, W. J. Oliver, E. Thomas Orgain, D. B. Osborne, Every M. Paget, W. W. Perkins, Dr. J. D. Plunkett, F. B. Pope, William Price, Charles Rainey, Frederick Rayfield, Isaac W. Read, W. A. Reynolds, I. T. Rhea, W. E. Richards, H. A. Rogers, V. N. Roadstrum, W. G. Sadler, G. W. Sanders, E. M. Sentelle, W. McR. Smith, R. G. Sparrow, J. F. Stackley, C. A. Steifelmeyer, S. E. Stewart, W. B. Stratford, John Sutterer, E. R. Taber, Frank E. Taylor, W. B. Taylor, W. D. Tharin, J. R. Timmerman, J. W. Todd, S. W. Travers, George H. Tucker, E. Van Winkle, J. T. Welch, O. C. Wiley, C. H. Willcox, T. B. Williams, Benjamin L. Willingham, W. S. Wight, E. G. Woodling.

Filed 11:30 A. M., May 25, 1906. H. M. Doak, Clerk, by E. L. Doak, Deputy Clerk. Abram M. Tillman, U. S. Atty.

I, H. M. Doak, Clerk of the Circuit Court of the United States in and for the Middle District of Tennessee, hereby certify that the foregoing is a true, perfect, and complete copy of an indictment filed as thereupon endorsed, etc. In witness whereof I have hereunto signed my name and affixed the seal of said court, at my office, this the 26th day of May, 1906.

[SEAL OF COURT.] H. M. DOAK, *Clerk.*

79 *Order Awarding Writs of Habeas Corpus and Certiorari.*

Filed July 14th, 1906.

In the Matter of the Petition of FRANK S. ROYSTER for Writs of *Habeas Corpus* and Certiorari.

FRANK S. ROYSTER, Petitioner,

versus

MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

Let the writ of *habeas corpus*, in due form of law, as prayed for in the within petition be issued directed to Morgan Treat, United States Marshal for the Eastern District of Virginia, commanding him forthwith to make return of said writ and to produce the body of said petitioner, Frank S. Royster, before this Court, to be dealt with according to law; and that the writ of certiorari as prayed for in said petition be issued and made returnable forthwith.

Richmond, Va., July 14th, 1906.

NATHAN GOFF,
Presiding Circuit Judge, April Term, 1906.

Writ of Habeas Corpus.

80 UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

To Morgan Treat, United States Marshal for the Eastern District of Virginia, or any of his deputies:

We command you that the body of Frank S. Royster in your custody detained, as it is said, together with the day and cause of his caption and detention, you safely have before our Circuit Court of the United States, within and for the District aforesaid, forthwith, to do and receive all and singular those things which the said Circuit Court of the United States, within and for the District aforesaid, shall then and there consider of him in this behalf; and have you then and there this writ.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond, this 14th day of July, in the year of our Lord one thousand nine hundred and six, and of our Independence the 131st year.

[Seal United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Marshal's Return.

To the Circuit Court of the United States for the Eastern District of Virginia:

Morgan Treat, United States Marshal for the said Eastern District of Virginia, to whom the annexed writ is directed, has now before the court the body of Frank S. Royster therein named, as thereby commanded. And I certify that the cause of the detention of the said Frank S. Royster is a warrant directed to me and issued by the Honorable Edmund Waddill, Jr., Judge, of the said Eastern
81 District of Virginia, on July 14, 1906, under the provisions of section 1014 of the Revised Statutes of the United States, commanding the imprisonment and removal of the said Frank S. Royster to the Middle District of Tennessee for trial in the Circuit Court of the United States for said last mentioned district upon a certain indictment found in said last mentioned court against him, the said Frank S. Royster and others, a copy of which warrant of removal is set out in the petition of the said Frank S. Royster herein; and that a full, true and correct statement of all the proceedings before the said Judge upon the application for the arrest and commitment of the said Frank S. Royster and his removal to said Middle District of Tennessee for trial is contained and set forth in the statement or order of said Judge, a copy of which is set forth in section 7 of the said Frank S. Royster's petition and in the documents made a part thereof and therein referred to.

Dated this 14th day of July, A. D. 1906.

MORGAN TREAT,
U. S. Marshal for the Eastern District of Virginia.

Writ of Certiorari.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

The President of the United States of America to the Judge of the District Court of the United States for the Eastern District of Virginia:

82 We being informed that there is now pending before you a suit in which the United States of America is plaintiff and Frank S. Royster is defendant; and we being willing, for certain reasons, that the said case and the record and proceedings therein should be certified by the Judge of the District Court of the United States for the Eastern District of Virginia and removed into the Circuit Court of the United States for the Eastern District of Virginia, sitting at Richmond, Virginia;

We do hereby command you forthwith that you send forthwith to the said Circuit Court of the United States for the Eastern District of Virginia, as aforesaid, the record and proceedings in said case, so that the said Circuit Court of the United States for the Eastern District of Virginia may act thereon as of right and according to law ought to be done.

Witness, The Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond, this 14th day of July, in the year of our Lord one thousand nine hundred and six, and of our Independence the 131st year.

[Seal United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Return of United States District Judge.

The Clerk of the United States District Court is hereby directed to deliver to the Judges of the United States Circuit Court within and for the Eastern District of Virginia the record and proceedings mentioned in the within writ.

Richmond, Va., July 14", 1906.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

83 *Transcript of Proceedings Before Honorable Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia.*

The following proceedings were had before Honorable Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia, at Richmond, Virginia, on the 14th day of July, 1906.

THE UNITED STATES
versus
FRANK S. ROYSTER.

Writ of Certiorari.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

The President of the United States of America to the Judge of the District Court of the United States for the Eastern District of Virginia:

We being informed that there is now pending before you a suit in which the United States of America is plaintiff and Frank S. Royster is defendant; and we being willing, for certain rea-
84 sons, that the said case and the record and proceedings therein should be certified by the Judge of the District Court of the United States for the Eastern District of Virginia and removed into the Circuit Court of the United States for the Eastern District of Virginia, sitting at Richmond, Virginia.

We do hereby command you forthwith that you send forthwith to the said Circuit Court of the United States for the Eastern District of Virginia, as aforesaid, the record and proceedings in said case, so that the said Circuit Court of the United States for the Eastern District of Virginia may act thereon as of right and according to law ought to be done.

Witness, The Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond, this 14th day of July, in the year of our Lord one thousand nine hundred and six, and of our Independence the 131st year.

[Seal of United States Circuit Court.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Return of United States District Judge.

The Clerk of the United States District Court is hereby directed to deliver to the Judges of the United States Circuit Court within and for the Eastern District of Virginia the record and proceedings mentioned in the within writ.

Richmond, Va., July 14th, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge.

85 *Complaint.*

Filed July 14th, 1906.

UNITED STATES OF AMERICA, *Eastern District of Virginia, act:*

On this 14th day of July, A. D. 1906, at the City of Richmond, in the said District, before the Hon. Edmund Waddill, Jr., Judge

of the District Court of the United States of America for the said District, comes Morgan Treat, United States Marshal in and for the said District, and upon his oath complains and says: that he has good cause to believe and does firmly believe that Frank S. Royster, of Norfolk, Virginia, stands indicted by the Grand Jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said Frank S. Royster on the eighth day of July in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, being during said period President of the F. S. Royster Guano Company, a corporation existing under and by the laws of the State of Virginia, did in the said Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said Frank S. Royster did unlawfully conspire with divers other persons and
86 corporations to commit an offense against the United States, to-wit, the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States, all as more fully set out in an indictment filed in the said Circuit Court of the United States in and for the Middle District of Tennessee on May 25, 1906, in cause No. 963, entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," a certified copy of which indictment is hereto attached and made a part of this complaint; and complainant therefore charges that the said Frank S. Royster did commit the said offense against the United States in manner and form as set forth in said indictment.

Complainant furthermore avers upon information and belief that in pursuance of an order of said Circuit Court of the United States for the Middle District of Tennessee a bench warrant has been issued from said Court for the arrest of said Frank S. Royster and delivered to the Marshal of said Court, who after due search has returned said warrant "not found" in said Middle District of Tennessee; and that said Frank S. Royster is now believed to be within the Eastern District of Virginia, of which District he is a resident.

Wherefore this complainant prays that the said Frank S. Royster may be arrested and imprisoned and removed or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee, and further dealt with according to law.

MORGAN TREAT, *Marshal.*

Subscribed and sworn to before me by the above named Morgan Treat the day and year first above written.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

87 *Certified Copy of Indictment.*

In the Circuit Court of the United States of America for the Middle District of Tennessee, of the April Term, in the Year of Our Lord Nineteen Hundred and Six.

MIDDLE DISTRICT OF TENNESSEE, *sct:*

The grand jurors for the United States of America, inquiring for the Middle District of Tennessee, upon their oath present, that before and on the eighth day of July, in the year of our Lord nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year of our Lord nineteen hundred and five, the following named corporations, respectively organized and existing under and authorized by the laws of the several States and of the foreign country here named in connection with them, and hereafter in this indictment called corporation defendants, to wit, the Virginia-Carolina Chemical Company, of New Jersey, Armour and Company, of Illinois, the Acme Manufacturing Company, of North Carolina, the Alabama Chemical Company, of New Jersey, the Anderson Phosphate & Oil Company, of South Carolina, the Ashepoo Fertilizer Company, of South Carolina, the Blackshear Manufacturing Company, of Georgia, the Etiwan Fertilizer Company, of South Carolina, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, The Furman Farm Improvement Company, of Georgia, the Goulding Fertilizer Company, Limited, of Great Britain and Ireland, The Goulding Fertilizer Company, of Florida, the Gulfport Cotton Oil, Fertilizer & Manufacturing Company, of Georgia, the Home Mixture Guano Company, of Georgia, the Jackson Fertilizer Company, of Mississippi, the Marietta Fertilizer Company, of Georgia, the Meridian Fertilizer Factory, of Mississippi, the National Fertilizer Company, of Tennessee, the New Orleans Acid and Fertilizer Company, of New Jersey, the Old Dominion Guano Company, of Georgia, the Planters Chemical Company, of Alabama, the Read Phosphate Com-
88 pany, of West Virginia, the F. S. Royster Guano Company, of Virginia, the Savannah Guano Company, of Georgia, the Southern States Phosphate and Fertilizer Company, of Georgia, the Standard Chemical & Oil Company, of Alabama, the Standard Guano and Chemical Manufacturing Company, of Louisiana, Swift & Company, of Illinois, the Tennessee Chemical Company, of Tennessee, and the Tennessee Valley Fertilizer Company, of Alabama, and certain firms, to wit, the firm of A. D. Adair and McCarty Brothers and the firm of Wilcox, Ives & Company, did carry on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereafter in this indictment called the States of the conspiracy, as wholesale dealers in complete and alkaline fertilizers and in acid phosphates, nitrates, and potash salts suitable for fertilizers, which then were useful and valuable articles of merchandise, indispensable for use on the soil of the said States of the conspiracy in order that the staple

crops of those States might be raised therefrom; that the following named persons, hereafter in this indictment called individual defendants, to wit, Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, of the said Virginia-Carolina Chemical Company, and J. Rice Smith, agent and manager of the said Virginia-Carolina Chemical Company, and president of the Georgia Chemical Works hereinafter mentioned, Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, Fred G. Brown, president and treasurer of the said Anderson Phosphate & Oil Company, Frank Burbidge, president, and William J. McCormack, treasurer of the said Etiwan Fertilizer Company, George Braden, president of the said Federal Chemical Company, of Delaware, and also of the said Federal Chemical Company, of Kentucky, Augustus D. Adair and James D. McCarty, officers and agents of the said Furman Farm Improvement Company and members of the said firm of A. D. Adair and McCarty Brothers, William DeC. Kessler, secretary and treasurer of the said Goulding Fertilizer Company, Limited, James G. Tinsley, president of the said Marietta Fertilizer Company and vice-president of the said Tennessee Chemical Company, William D. Rhea, general manager of the said National Fertilizer Company, William L. Peel, president of the said Old Dominion Guano Company, Abram C. Read, vice-president and general manager, and Isaac Mayo Read, agent, of the said Read Phosphate Company,
89 Frank S. Royster, president, and Charles F. Burroughs, vice-president, of the said F. S. Royster Guano Company, A. J. Ives, whose Christian name is to the said grand jurors unknown, secretary and treasurer of the said Savannah Guano Company and a member of the said firm of Wilcox, Ives & Company, T. Porter Fleming, vice-president of the said Southern States Phosphate and Fertilizer Company, and T. Garland Tinsley, president and treasurer of the said Tennessee Chemical Company, in their said several capacities as officers, managers, agents, and attorneys of the said corporation defendants and members of the said firms, and on behalf of those corporations and firms, during the period of time in this indictment first aforesaid, did carry on the business aforesaid; that in so carrying on the said business the said defendants, that is to say, the said corporation and individual defendants, did sell and deliver large quantities of the said merchandise within the limits of the said States of the conspiracy from the respective places of business of the said corporation defendants and the said firms, located at different points within those States, to retail dealers in and consumers of such merchandise, in such States respectively, and did also ship large quan-ties of the same from their respective places of business, located in the said States of the conspiracy and also in the States of Virginia, Illinois, and Kentucky, into and through other of the said States than those in which their said places of business were located; that in so carrying on the said business and shipping the said merchandise from one of the said States into and through another or others thereof, the said defendants, during the period

aforesaid, were engaged in trade and commerce among the States of this Union within the meaning of the Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in so carrying on the said business, trade and commerce, the said Virginia-Carolina Chemical Company and the said Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, and J. Rice Smith, agent and manager, of the said Virginia-Carolina Chemical Company, did make use of and operate a portion of their said business, trade and commerce through each of certain other corporations, to wit, the American Fertilizing Company, of Virginia, the Birmingham Fertilizer Company, of Alabama, the Coweta Fertilizer Company of Georgia, the Georgia Chemical Works, of Georgia, the Navassa Guano Company, of North Carolina, of either the whole or a majority of the capital stock of which said corporations respectively the said Virginia-Carolina Chemical Company was the owner; that in so carrying on the said business, trade and commerce, the said Armour and Company and the said Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, did make use of and operate all of their said business, trade and commerce through a certain other corporation called the Tuscarora Fertilizer Company, of New Jersey, and a certain trade name, to wit, the trade name of Armour Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Furman Farm Improvement Company and the said firm of A. D. Adair and McCarty Brothers did make use of and operate a portion of their said business trade, and commerce under the trade name of Chickamauga Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Federal Chemical Company, of Delaware, and the said Federal Chemical Company of Kentucky, did make use of, and operate a portion of their said business, trade and commerce through, the names of Century Phosphate Company, Fox Chemical Company, Branch, Globe Fertilizer Company, Branch, and Tennessee Phosphate Company; that in so carrying on the said business, trade and commerce, the said National Fertilizer Company did make use of, and operate a portion of its said business, trade and commerce through, the corporate name of American Guano Company and the trade name of Nashville Guano Company; that in so carrying on the said business, trade and commerce, the said Read Phosphate Company did make use of, and operate a portion of its said business, trade and commerce through the corporate name of Empire Guano Company; that in so carrying on the said business, trade and commerce, the said F. S. Royster Guano Company did make use of, and operate a portion of its said business, trade and commerce through the trade name of Atlantic Chemical Company and the corporate name of Columbia Guano Company; that in so carrying on the said business, trade and commerce, the said Swift and Company did make

use of, and operate the whole of its said business, trade and commerce through, the trade name of Swift Fertilizer Works; and that in so carrying on the said business, trade and commerce, the said Tennessee Chemical Company did make use of, and operate a portion of its said business, trade and commerce through, the trade name of Continental Fertilizer Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that of the total volume of such business, trade and commerce then so being carried on by the said defendants and their competitors, the said defendants together had and controlled
91 the principal part, that is to say, ninety per centum thereof; and that because the said corporation defendants and the said firms were in fact separate and distinct from each other, they should have conducted their interstate trade and commerce strictly in competition with each other, during the said period, and then would have so conducted the same but for the unlawful conspiracy in restraint of the said business, trade and commerce in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, at and within the said Middle District of Tennessee, in violation of the provisions of said section one of the said Act of Congress, unlawfully did knowingly engage in a conspiracy in restraint of the said business, trade and commerce, so then being carried on by them in the manner aforesaid, whereby the said business, trade and commerce was restrained in the several ways and by the several means now here set forth and described, that is to say:

Competition as to the prices at which the said merchandise was sold and delivered by the said corporation defendants and the said firms in the said States of the conspiracy, which before the period of time in this indictment first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was prevented and destroyed by the said defendant from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them styled "current, reasonable market prices," for the said merchandise so sold and delivered by the said corporation defendants and the said firms in those States, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so fixed and caused to be fixed; which said uniform and non-competitive prices were prices greatly in excess of the prices which but for the said unlawful conspiracy would at such times have prevailed for the said merchandise in the said business, trade and commerce, and were prices therefore unreasonable, and were a tax on the people of the said States of the said conspiracy amounting to a large sum of money, to wit, four million dollars, annually during the continuance of the same.

For and on account of such quantity of the said merchandise as was sold and delivered as aforesaid by any of such corporation de-

fendants or of such firms, in excess of amounts allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and de-
92 livered in excess, was, by the corporation defendants and firms so selling and delivering the same, paid into a common fund, held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, compensated, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as sold and delivered less than the amounts so allotted to them respectively, so it was not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy that each of the said corporation defendants and of the said firms also paid into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be the absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm, in disposing of its said allotment in carrying on the said business, trade and commerce, on its part faithfully should exercise every reasonable effort and due business diligence to maintain the prices so fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its said excess sales, in which case an equal amount was returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also made uniform and non-competitive as between all of the said corporation defendants and the said firms, in the said business, trade and commerce, among the said States of the conspiracy.

As a convenient intermediary and common agent between the said corporation defendants and the said firms, respectively and as a means of securing their co-operation in carrying out the said unlawful conspiracy, the said defendants made use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company, Limited, was also allowed and re-
93 quired to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of September, in the year nineteen hundred and three, during the period of time aforesaid, at and within the City of New York, in the State of New York, unlawfully did knowingly, deposit with the Continental Trust Company, of the said City of New York, the sum of twenty-six thousand dollars, in connection with the purchase of by the said trust company on behalf of the said Virginia-Carolina Chemical Company, and in the name of one Montrose Stuart, a clerk in the office of the said trust company, of twenty-six hundred shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Samuel T. Morgan, on the seventh day of October, in the same year nineteen hundred and three, and during the period of time aforesaid, at and within the said city of New York, in the State of New York, unlawfully did deliver to the said William DeC. Kessler, Vice-President of the said Colonial Development Company, Limited, three checks drawn by the said Virginia-Carolina Chemical Company, one upon the National City Bank, of New York City aforesaid, for eighty thousand dollars, another on the Bank of America, of New York City aforesaid, for fifty thousand dollars, and the other on the National Park Bank, of New York City aforesaid, for thirty-five thousand and four hundred and sixty-eight dollars, aggregating one hundred and sixty-five thousand and four hundred and sixty-eight dollars, as and for a payment, by the said Virginia-Carolina Chemical Company, to the said Colonial Development Company, Limited, of twenty cents a ton on its allotment under the said unlawful conspiracy; he the said Samuel T. Morgan, when and where he so as aforesaid delivered the said checks to the said William DeC. Kessler, well knowing the character and purpose of the same, and well knowing that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as acts on their parts respectively of engaging in the same, the said Samuel T. Morgan,
Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox,
94 J. Rice Smith, Austin B. Carpenter, Charles G. Wilson,
Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, on the seventeenth day of September, in the year nineteen hundred and three, and during the period aforesaid, at the said City of New York, in the said State of New York, unlawfully did meet together to discuss and further the object of the said unlawful conspiracy; they the said Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy,

Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, when and where they so as aforesaid met together, each well knowing the character and purpose of the said meeting, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank E. Wilcox, on the first day of November, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did deliver to one W. W. Perkins, Secretary of the said American Fertilizing Company, a certain document, too voluminous to be here set forth, stating certain prices and terms of sale, fixed in pursuance of the said unlawful conspiracy, for the said fertilizer merchandise, in the States of North Carolina, South Carolina, Georgia, Florida, Alabama and Tennessee, for the spring season of the year nineteen hundred and four; he the said Frank E. Wilcox at the time and place when and where he so as aforesaid delivered the said document to the said W. W. Perkins, well knowing the character of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, and during the period of time aforesaid, at the town of Decherd, in the said Middle District of Tennessee, by and through one
95 F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, and during the period aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to

furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, and during the period of time aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at the City of Nashville, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, a certain notice of shipment, partly written and partly printed, in the words and figures following, that is to say:

"The Armour Fertilizer Works
Owned and operated by
Armour & Company.

Prudential Building,
Atlanta, Ga.

Duplicate.
To be Mailed with Bill of
Lading to Customer.

No. 612
March 10", 1905.

96 We have this day shipped from Nashville, Tenn. storage
To Bramlitt Hdw Co.
Corinth, Miss.

Charge to S. D. Bramlitt. Address same.

No. Bags.	Weight of bags.	Brand	Tons.
400	100	King Cotton 8.2.2	20

Order No. 4613.

Bill of lading herewith. Invoice will be mailed from Chicago.
Above quantities shipped 3 10 1905. Freight Terms.....
Car No. 13619. Via L. & N.
Charges prepaid $48.00.

THE ARMOUR FERTILIZER WORKS,
Per ALEX. LESLIE."

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the

said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Austin B. Carpenter, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Assistant Secretary of the said Colonial Development Company, unlawfully did sign his name, to wit, "A. B. Carpenter, Ass't Sec'y" on the face of a certain stock certificate, to wit, certificate No. 28, showing the ownership by one Thomas M. Green of fifty-one shares of the capital stock of the said Colonial Development Company; he the said Austin B. Carpenter, at the time and
97 place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his said act to be done in pursuance and to effect the object of the said conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles H. MacDowell, on the twelfth day of January, in the year nineteen hundred and five, and during the period of time aforesaid, at and within the city of Chicago, in the State of Illinois, unlawfully did sign his name, to-wit, "C. H. MacDowell," under the name of the Armour Fertilizer Works, and after the word "by" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Armour and Company, under the trade name of "Armour Fertilizer Works," offered to furnish and deliver at Corinth, in the State of Mississippi to one S. D. Bramlitt, twenty tons of the fertilizer merchandise aforesaid; he the said Charles H. MacDowell, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Acme Manufacturing Company, on the first day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the city of Wil-

mington, in the State of North Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of six hundred and twenty dollars for sixty-two shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Alabama Chemical Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Montgomery, in the State of Alabama, unlawfully did knowingly deliver its certain check drawn upon the Merchants and Planters-Farley National Bank, Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of William DeC. Kessler, as payment for forty-two shares of the capital stock of the said Colonial Development Company, Limited;

98 And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Anderson Phosphate and Oil Company, on the twenty-ninth day of August, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Anderson, in the State of South Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of five hundred and eighty dollars for fifty-eight shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly buy from the Carolina Savings Bank, Charleston, South Carolina, a draft upon the Citizens National Bank, of New York City, for the payment of the sum of seven thousand nine hundred and forty-nine dollars and forty-three cents to the order of one Frank E. Taylor, Vice-President and General Manager of the said Ashepoo Fertilizer Company;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and *and* during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly cause the said Frank E. Taylor to endorse the check last above mentioned payable to the order of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Blackshear Manufacturing Company, on the seventeenth day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Blackshear, in the State of Georgia, unlawfully did know-

ingly deliver to the Atlantic Coast Line Railroad Company six tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of E. J. Blume & Company, at Live Oak, in the State of Florida;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Etiwan Fertilizer Company, on the fourteenth day of December, in the year nineteen hundred
99 and three, and during the period of time aforesaid, at and within the town of Cairo, in the State of Georgia, by and through one P. H. Seabrook, its agent, unlawfully did knowingly offer and agree to furnish and deliver to the firm of Wight Brothers, of Cairo aforesaid, thirty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank Burbidge, on the first day of July, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Charleston, in the State of South Carolina, having then and there in his hands a certain check, dated the thirtieth day of June, in the same year nineteen hundred and four, drawn by the said Alabama Chemical Company upon the Continental National Bank of Chicago, for the payment of eleven hundred and forty-two dollars and ninety-seven cents to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Pay to order of People's National Bank, Colonial Development Co., Ltd., F. Burbidge, Pres."; he the said Frank Burbidge then and there, to wit, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William J. McCormack, on the ninth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, having then and there in his hands a certain check dated the fifth day of September, in the same year, drawn by the said New Orleans Acid & Fertilizer Company, upon the Louisiana National Bank of New Orleans, for the payment of seven hundred and fifty dollars to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Colonial Developm't Co., Frank Burbidge, Sec. & Treas., per Wm. J. McCormack"; he the said William J. McCormack, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy,

and to effect the object of the same, and as an act on its part of engaging in the same, the said Federal Chemical Company, of
100 Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the said State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, and during the period of time aforesaid, at Springfield afore-
101 said, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff & Williams, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Goulding Fertilizer Company, Limited, on the twenty-fifth day of November, in the year nineteen

hundred and three, and during the period of time aforesaid, at and within the town of Cullman, in the State of Alabama, by and through one W. E. Craig, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one John Sutterer, at Cullman aforesaid, three hundred and seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the sixth day of September, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Pensacola, in the State of Florida, having then and there in his hands a certain check, dated the fifth day of September, in the same year nineteen hundred and three, drawn by the said Alabama Chemical Company upon Merchandise Merchants and Planters-Farley National Bank of Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of W. DeC. Kessler, unlawfully did sign his name, to wit, "W. DeC. Kessler," upon the back of the said check next below the written words "Pay to the order of Colonial Development Co."; he the said William DeC. Kessler then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the back of the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the said fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Vice-President of the said Colonial Development Company, unlawfully did sign his name, to wit, "W. DeC. Kessler, V. P." on the face of the said stock certificate in the name of Thomas M. Green; he the said William DeC. Kessler, at the time and place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his act to be done in pursuance and to effect the object
102 of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Gulfport Cotton Oil Fertilizer and Manufacturing Company, on the twenty-seventh day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-four hundred dollars for and in respect of twelve thousand tons of the fertilizer merchandise aforesaid, allotted to the said Gulfport Cotton Oil, Fertilizer and Manufacturing Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy,

and to effect the object of the same, and as an act on its part of engaging in the same, the said Home Mixture Guano Company, on a day in the year nineteen hundred and three to the said grand jurors unknown, and during the period of time aforesaid, at and within the City of Columbus, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Jackson Fertilizer Company, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Jackson, in the State of Mississippi, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Marietta Fertilizer Company, on the twenty-first day of July, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by and through one L. W. Reeves, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one James A. Boyd, at Jonesboro aforesaid, seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said James G. Tinsley, on the third
103 day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Nashville, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley; he the said James G. Tinsley, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Meridian Fertilizer Factory, on the seventh day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Cullman, in the State of Alabama, by its agent E. L. Robbins, un-

lawfully did knowingly offer to furnish to C. A. Steifelmeyer one hundred and fifty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge; he the said
104 William D. Rhea, then and there, to wit, at the time and place when and where he so directed and required the said E. W. Connell to sign his name as aforesaid to the said check, well knowing the nature and contents of the said check, and that his said direction and requirement were in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid; he the said William D. Rhea then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the said document, well knowing the character of the same, and well knowing his said act to be one done in pursuance of and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said New Orleans Acid & Fertilizer Company, on

the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars for seventy-five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Old Dominion Guano Company, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-six hundred and twenty dollars, for and in respect of
105 thirteen thousand one hundred tons of the fertilizer merchandise aforesaid, allotted to the said Old Dominion Guano Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William L. Peel, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did sign his name, to wit, "W. L. Peel, Prest.," to a certain check, to wit, a check drawn by the Maddox-Rucker Banking Company upon the National Park Bank, New York, for the payment of twenty-six hundred and twenty dollars to the order of the said Colonial Development Company, Limited; he the said William L. Peel, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Planters Chemical Company, on the thirtieth day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Talladega, in the State of Alabama, unlawfully did knowingly pay the said Colonial Development Company, Limited, the sum of fifty dollars for five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Read Phosphate Company, on the fifth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Hartselle, in the State of Alabama, unlawfully did knowingly offer to sell and deliver to one S. E. Stewart, at that place, forty to fifty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of en-

gaging in the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here
106 set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid; he the said Abram C. Read, then and there, to wit, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved, Nashville, Tenn. Dec. 6, 1904," and above the word "Manager," upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof, offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid; he the said Abram C. Read then and there, to wit, at the time and place when and where he so as aforesaid signed his name to the last mentioned document, well knowing the character and contents of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said F. S. Royster Guano Company, on the thirtieth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine thousand three hundred and fourteen dollars and seventy-four cents, on account of such merchandise sold and delivered by the said F. S. Royster Guano Company in excess of its allotment under the aforesaid unlawful conspiracy;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles F. Burroughs, on the
107 twenty-fifth day of March, in the year nineteen hundred and four, and during the period of time aforesaid, at and within

the City of Norfolk, in the State of Virginia, unlawfully did sign his name, to wit, "C. F. Burroughs," under the word "countersigned" and above the words "Vice-President" upon the face of a certain document, partly written and partly printed, too voluminous to be here set forth in full, wherein and whereby the said F. S. Royster Guano Company and he the said Charles F. Burroughs, as Vice-President thereof, offered to sell to one J. W. Carter, and to deliver to him at Maxton, in the State of North Carolina, ten tons of the fertilizer merchandise aforesaid; he the said Charles F. Burroughs, at the time and place when and where he so as aforesaid signed his name to the said document, well knowing the character and contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Savannah Guano Company, on the second day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did knowingly pay to the said Frank Burbidge the sum of nine hundred and forty dollars for ninety-four shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said A. J. Ives, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did sign his name, to wit, "A. J. Ives, Secty. & Treas." to a certain check, to wit, a check drawn by the Savannah Guano Company upon the Merchants National Bank, Savannah, Georgia, for the payment of three thousand one hundred and forty dollars to the order of New York Exchange; he the said A. J. Ives, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further n pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Southern States Phosphate and Fertilizer Company, on the fifth day of September, in the year nineteen
108 hundred and three, and during the period of the time aforesaid, at and within the City of Augusta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine hundred and sixty dollars for ninety-six shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Chemical and Oil Company, on the third day of October, in the year nineteen hundred and three,

and during the period of time aforesaid, at and within the Town of Troy, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand dollars for and in respect of one-half of forty thousand tons of the fertilizer merchandise aforesaid allotted to the said Standard Chemical and Oil Company, as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Guano and Chemical Manufacturing Company, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand seven hundred and seventy-four dollars and seventy-seven cents as a partial payment for and in respect of the fertilizer merchandise aforesaid, allotted to the said Standard Guano and Chemical Manufacturing Company, as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Swift & Company, on the first day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by its agent, J. Z. Elliott, unlawfully did knowingly offer to furnish to one W. P. Diehl thirty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

And that, further in pursuance of the said unlawful con-
109 spiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes & Bro., at Oxford, Alabama, a certain letter of the tenor following, to wit:

T. G. Tinsley, Pres't & Treas. Allen Hardison, Sec'y.

Tennessee Chemical Company, Manufacturers and Importers of Ox Fertilizers.

NASHVILLE, TENNESSEE, *May* 17, '05.

Messrs. D. P. Haynes & Bro., Oxford, Ala.

DEAR SIRS:—I am in receipt of your favor of the 16th and beg to state we could not allow any discount further than the 5% for cash settlement. We will be glad to have you settle in cash on this basis if you desire to do so, but are sorry to state we are not in a position to offer you any further discount.

Yours truly, T. G. TINSLEY, *President;*

he the said T. Garland Tinsley then and there, to wit, at the time and place when and where he so as aforesaid caused the said letter to be written and sent as aforesaid, well knowing that the same was so written and sent in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part in engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Company, James G. Tinsley. By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon the Mercantile National Bank, New York, for the payment of
110 sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley; he the said T. Garland Tinsley, at the same time and place when and where he so as aforesaid wrote the said endorsement on the back of the said check, well knowing the contents of the same, and that his said act was done in pursuance of and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Valley Fertilizer Company, on the second day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Florence, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars, as a partial payment for and in respect of fertilizer merchandise aforesaid, allotted to the said Tennessee Valley Fertilizer Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on their parts respectively, of engaging in the same, the said Frank Burbidge,

Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson, during the period of time aforesaid, at the City of New York, in the State of New York, the City of Washington, in the District of Columbia, Old Point Comfort and Hot Springs, in the State of Virginia, St. Augustine, in the State of Florida, and French Lick Springs, in the State of Indiana, unlawfully did as officers, directors and attorney of the said Colonial Development Company, Limited, meet together for the purpose of discussing and attending to the affairs of the said Colonial Development Company, Limited; they the said Frank Burbidge, Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson when and where they so met together aforesaid, well knowing the purpose of such meetings, and well knowing their acts in the premises to be acts in pursuance and to effect the object of the said unlawful conspiracy, and that the same were done as acts on their parts respectively of engaging in the said unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, during the period of time aforesaid, and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form aforesaid, unlawfully did engage in a conspiracy in restraint of trade and commerce among the several States; Against the
111 peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

SECOND COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the first count described, and were so engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord, nineteen hundred and three at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the grand jurors unknown, and engage in a conspiracy, among themselves and with such other

unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid; which said unlawful conspiracy in this count mentioned then and there was a conspiracy for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described; that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing and causing to be fixed, uniform and non-competitive prices, by them to be styled "current, reason-
112 able market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such times prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be the

absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on the said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its excess sales, in which case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of pay-
113 ment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their co-operation in carrying out the said unlawful conspiracy, the said defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, and as being acts on the part of the said corporation and individual defendants respectively of engaging in that conspiracy, are now here in this count charged to be acts by the same corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned, and to have been acts on the part of the said corporation and individual defendants respectively of engaging in the last-named unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the

said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of trade and commerce among the several States;
114 against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

THIRD COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the said first count described, and so were engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the said United States, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the said United States, to wit, the offense of engaging in a combination, among themselves and with such other unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid, which said unlawful conspiracy in this count mentioned then and there was a conspiracy to engage in a combination for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and com-
115 merce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them to be styled "current,

reasonable market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such time prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful combination and ninety per centum thereof during the second year; it being a further element of the said unlawful combination in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be — absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on the said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its excess sales, in which
116 case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their cooperation in carrying out the said unlawful combination, the said

defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful combination; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, are now here in this count charged to be acts by the said corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a con-
117 spiracy to commit an offense against the said United States;
Against the peace and dignity of the said *said* United States;
Against the peace and dignity of the said United States, and contrary to the form of the statute in such case made and provided.

Fourth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in

connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State, but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchan-
118 dise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the aforesaid business and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section one of the said Act of Congress, approved July 2, 1890, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Ala-

bama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company,

119 and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly engage in a conspiracy in restraint of commerce among the several States, to wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, whereby the said commerce was restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise which were maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the period of such unlawful conspiracy, and greatly in excess of those prices which would have otherwise prevailed in the said States during the period of such unlawful conspiracy, and were therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby earnest money was given to secure the maintenance of such prices and compensation was made to those losing volume of business by reason of maintaining such prices, that is to say:

There was from time to time allotted to each of said corporation

defendants and firms an amount of tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporations defendants and firms paid into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sums becoming due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which faithfully maintained such uniform and non-competitive prices and failed to make sales
120 and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but sold and delivered through itself and its subsidiary companies a minimum amount thereof required as a guarantee of good faith, received from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid fell short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies made such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, as a penalty upon such excess sales, paid into such common fund like amounts per ton on the said respective kinds of fertilizers, divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means whereby said unlawful conspiracy was effected, a corporation of Ontario, Canada, whose stock was apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was the common fund aforesaid into which was paid the earnest money and penalties on excess sales aforesaid, and from which was paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which the same was operated and directed.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that within the period aforesaid of said unlawful conspiracy in this count of this indictment mentioned, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and did do and perform such acts as acts on their respective parts of engaging in the said unlawful conspiracy in this count of this indictment mentioned, and that each of such defendants at the time and place when

and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant- respectively, then and there well knew the character of such act and that such
121 act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, and as an act on the part of such defendant in engaging in the same, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year, nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the
122 tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to

Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chatta-
123 nooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit,
124 "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawul conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec. 6, 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abraham C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P.
125 Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said corporation and individual defendants, during the period of time aforesaid, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

FIFTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen

hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the
126 other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so

carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, approved July 2, 1890, the said corporation de-
127 fendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, and engage in a conspiracy among themselves and with such other unknown corporations and persons, in restraint of commerce among the several States, to-wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid by which unlawful conspiracy said commerce was to be restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the

various points of delivery in the said States of the conspiracy,
128 which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy, and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices, that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to make sales and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales as aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants
and firms and paid for by them at ten dollars a share; whose
129 treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary

and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful conspiracy was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that such act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

130 In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one

Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesand, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company,
131 on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brotners and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of

Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District
132 of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his, the said E. W. Connell's name as such Treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fer-

tilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tenneess, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn., Dec. 6 1904" and
133 above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for

the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

134 SIXTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United

States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An
135 Act to protect trade and commerce against unlawful restraints and monopolies"; that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorneys of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and in the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section 5440 of the Revised Statutes of the United States, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack,
136 George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Roys-

ter, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the United States, to wit, to engage in a combination in restraint of commerce among the several States, namely, a combination in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, and did then and there so conspire to commit the aforesaid offense by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy; and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices; that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to
137 make sales and deliveries of such merchandise through itself and its subsidiary — amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation

defendants and firms which, through itself and its subsidiary companies, should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful combination was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that
138 such act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the

object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at
139 West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and

within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchan-
140 dise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Arndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee,

unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Man-
141 ager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec 6 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid. in the said Middle District of Tennessee,

unlawfully did cause to be written and sent by mail to "D. P. Haynes and Bro.," at Oxford, Alabama, that certain letter of the date
142 set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley, By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did conspire to commit an offense against the United States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

ABRAM M. TILLMAN,
United States Attorney.

(Endorsed as follows:) No. 963. United States Circuit Court, Middle District of Tennessee. *The United States vs. Virginia-Carolina Chemical Company et als.*

Indictment for violating Act of Congress approved July 2, 1890, and entitled "An Act to Protect Trade and Commerce against unlawful restraints and monopolies," and Section 5440 R. S. U. S.

A True Bill. Robert Q. Stewart, Foreman of the Grand Jury.

Names of Witnesses Sworn and Examined Before the Grand Jury.

J. C. Adams, Henry E. Ahern, Lee Ashcraft, Eugene Atkinson, N. E. Barker, W. F. Barrett, James C. Beck, J. M. Berry, W. W. Bird, L. W. Botts, Clarence Braden, S. D. Bramlitt, A. P. Brantley,
B. D. Brantley, Dewitt Brown, H. C. Brown, Arthur Bussey,
143 Hezekiah Bussey, E. J. Blume, James A. Boyd, William F. Burns, Oscar Bright, J. W. Carter, B. G. Clark, C. W. Comes, E. W. Connell, Charles Earle Currie, R. L. Davis, Joseph Denee, W. P. Diehl, A. M. Dobbs, John V. Dobson, C. H. Drayton, W. L. Dumas, J. B. Duncan, S. Eastland, T. B. Edwards, Culpepper Exum, H. C. Fischer, J. B. Fiser, Albert French, C. A. Gambrill, A. H. George, John E. Gibbs, William Gilchrist, James M. Goldsmith, A. A. Green, E. P. Grice, W. A. Hansell, G. A. Harrington, H. J. Harby, Allen Hardison, L. C. Hayne, J. L. Haynes, D. P. Haynes, R. W. Henderson, P. W. Hendricks, E. R. Hodgson, junior, E. R.

Hodgson, senior, J. L. Horn, W. E. Hudson, T. J. Hunt, R. H. Johnston, T. V. Kessler, E. M. Kirk, Henry Kirn, H. L. Law, Alexander Meade, J. R. Mingey, W. Hampton Morgan, Mary Nace, John A. Lewis, W. F. McKenzie, Robert F. Maddox, H. W. Malloy, E. R. Manning, H. L. Milligan, J. Allen Moore, M. B. Neece, W. J. Oliver, E. Thomas Orgain, D. B. Osborne, Every M. Paget, W. W. Perkins, Dr. J. D. Plunkett, F. B. Pope, William Price, Charles Rainey, Frederick Rayfield, Isaac W. Read, W. A. Reynolds, I. T. Rhea, W. E. Richards, H. A. Rogers, V. N. Roadstrum, W. G. Sadler, G. W. Sanders, E. M. Sentelle, W. McR. Smith, R. G. Sparrow, J. F. Stackley, C. A. Steifelmeyer, S. E. Stewart, W. B. Stratford, John Sutterer, E. R. Taber, Frank E. Taylor, W. B. Taylor, W. D. Tharin, J. R. Timmerman, J. W. Todd, S. W. Travers, George H. Tucker, E. Van Winkle, J. T. Welch, O. C. Wiley, C. H. Willcox, T. B. Williams, Benjamin L. Willingham, W. S. Wight, E. G. Woodling.

Filed 11:30 A. M., May 25, 1906. H. M. Doak, Clerk, by E. L. Doak, Deputy Clerk. Abram M. Tillman, U. S. Atty.

I, H. M. Doak, Clerk of the Circuit Court of the United States in and for the Middle District of Tennessee, hereby certify that the foregoing is a true, perfect, and complete copy of an indictment filed as thereupon endorsed, etc. In witness whereof I have hereunto signed my name and affixed the seal of said court, at my office, this the 26th day of May, 1906.

[SEAL OF COURT.] H. M. DOAK, *Clerk*.

144 *Warrant.*

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

To the Marshal of the Eastern District of Virginia, Greeting:

Whereas complaint in writing, on oath, has been made to me charging that Frank S. Royster, of Norfolk, Virginia, stands indicted by the grand jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said Frank S. Royster on the eighth day of July, in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, did in the Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said Frank S. Royster did unlawfully conspire with divers other persons and corporations to com-

mit an offense against the United States, to-wit, the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States; and application has been made to me that the said Frank S. Royster may be arrested and imprisoned and removed or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee;

Now therefore, you are hereby commanded to arrest the
145 said Frank S. Royster if he be found within your said District, and bring him forthwith before me at my Chambers in Richmond, in order that he may be dealt with according to law.

Richmond, Va., July 14th, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge.

Marshal's Return.

Pursuant to the within writ, I have taken the defendant Frank S. Royster into custody and now have him before Hon. Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia.

July 14, 1906.

MORGAN TREAT,
United States Marshal.

Conclusions of the Court.

Filed July 14th, 1906.

THE UNITED STATES
vs.
FRANK S. ROYSTER.

The conclusion reached by the Court is that in a proceeding for the arrest and removal of persons charged with a violation of the laws of the United States pursuant to section 1014 of the Revised Statutes of the United States, before a United States District
146 Judge sitting in the State of Virginia, in which State there no longer exists the right of a preliminary examination upon a criminal charge prior to the trial upon the merits, when such Judge is called upon to act as well in the matter of the apprehension of such persons, as in their removal to the jurisdiction in which they have been indicted, that upon the government's presentation of a sufficient indictment regularly found by a grand jury in a court of the United States, properly charging the commission of an offense within the district in which such indictment is found, coupled with proof of the identity of the person indicted, it is its duty to properly bail such person for appearance before the Court in which he is indicted, or cause him to be removed thereto.

Order Allowing Bail.

Filed July 14th, 1906.

UNITED STATES OF AMERICA, *Eastern District of Virginia, set:*

The within named Frank S. Royster having been brought before me, and identified; and it appearing by a duly authenticated copy of an indictment that he stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al,*" for violation of section one of the act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of Section 5440 of the Revised Statutes of the United States, it is ordered that the said Frank S. Royster give
147 bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial before said Court under the said indictment, or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee, to be there dealt with according to law.

Richmond, Va., July 14", 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the
Eastern District of Virginia.

Warrant of Imprisonment and Removal.

UNITED STATES OF AMERICA, *Eastern District of Virginia, set:*

The President of the United States to the United States Marshal of the Eastern District of Virginia, Greeting:

Whereas it has been made to appear that Frank S. Royster stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled: "The United States *vs.* Virginia-Carolina Chemical Company *et al,*" for violation of section one of the act of Congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States; and whereas the said Frank S. Royster having been brought before me, and identified; and a certified copy of said indictment furnishing probable cause to believe him to be guilty as therein charged, and whereas it was thereupon ordered by me
148 that said defendant give bail in the sum of five thousand dollars with one or more sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial under said indictment, or that in default thereof

he be imprisoned for seasonable removal to the said Middle District of Tennessee to be there dealt with according to law; and the said defendant having failed and refused to give bail as required, therefore:

You are hereby commanded in the name and by the authority of the said United States to imprison the said Frank S. Royster in accordance with law, and that with all convenient speed you remove him hence to the said Middle District of Tennessee and there surrender him to the Marshal of that District, there to be dealt with according to law.

Richmond, Va., July 14, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the
Eastern District of Virginia.

Marshal's Return on Foregoing Warrant

Executed July 14, 1906, by taking the within named defendant Frank S. Royster into custody, but before the order of removal was executed, a writ of *Habeas Corpus* was issued by order of the Circuit Court of the United States for the Eastern District of Virginia, sitting at Richmond, Virginia, commanding me to produce the body of the said Frank S. Royster before the said United States Circuit Court in the City of Richmond, Virginia, forthwith, and in pursuance of said writ of *Habeas Corpus*, I took the said Frank S. Royster before the United States Circuit Court as aforesaid,
149 by which court said writ of *Habeas Corpus* was discharged and an appeal allowed to the said Frank S. Royster to the Supreme Court of the United States, pending which appeal the said Frank S. Royster was by order of said Circuit Court discharged from custody on bond conditioned for his appearance before said Circuit Court to abide such order as should be made by said Circuit Court upon return of the mandate of said Supreme Court of the United States upon determination of said appeal.

Richmond, Virginia, July 14, 1906.

MORGAN TREAT,
United States Marshal.

Statement of Proceedings and Order.

Filed July 14, 1906.

THE UNITED STATES
vs.
FRANK S. ROYSTER.

THE UNITED STATES OF AMERICA, *Eastern District of Virginia:*

This is an application under the provisions of Section 1014 of the United States Revised Statutes for a warrant for the removal of

Frank S. Royster to the Middle District of Tennessee and comes before me as follows:—

The District Attorney for this District, together with Mr. E. T. Sanford, Counsel for the United States, presented to me a verified complaint of Morgan Treat, United States Marshal for this District, with a certified copy of an Indictment filed on May 25th, 1906, in the Circuit Court of the United States for the Middle District of Tennessee in the case of the United States *vs.* Virginia-Carolina
150 Chemical Company and other defendants, including among such defendants the said Frank S. Royster.

Said complaint and copy of said indictment are made parts of this order. Upon the exhibition of this Indictment and affidavit and the *ex parte* motion of the counsel for the United States I made an order for the arrest of said Frank S. Royster and his production before me.

This order was duly executed by the said Marshal, who arrested the said Frank S. Royster and brought him before me in Richmond on this 14th day of July, 1906, as shown by his return. When the accused was so brought before me it was moved by the counsel for the United States that inasmuch as the indictment charged offenses against the United States triable in the Circuit Court of said United States for the Middle District of Tennessee, and the identity of the defendant was admitted, that an order be forthwith made for the commitment of said Frank S. Royster for trial before said Circuit Court.

This motion was made upon the certified copy of the Indictment without any further testimony, the identity of the party arrested and brought before me as the Frank S. Royster mentioned in the Indictment being admitted.

And thereupon the defendant Frank S. Royster offered himself as witness in his own behalf, and being about to be sworn, the United States, by its Counsel, thereupon objected to the witness being sworn, or to any testimony being given in rebuttal of the indictment in these proceedings on the ground that the identity of the defendant being admitted, inasmuch as the indictment on its face charges offenses against the United States committed and triable in the jurisdiction in which the defendant stands indicted, no evidence is admissible here to impeach the indictment, and the order of commitment should be made without further proof.

The Defendant's counsel thereupon offered to prove by the defendant and other witnesses then and there present, that the Circuit Court for the Middle District of Tennessee had no jurisdiction
151 over the person of said defendant touching the offense charged in said indictment, in that defendant and said other witnesses would, if permitted, testify That the said Frank S. Royster did not on the 17th day of September in the year 1903, in the City of New York or at any other time or in any other place meet with the persons named in said indictment or any other person or persons to discuss, enter into or make and further the objects of any agreement, combination or conspiracy, nor did he meet with said Samuel T. Morgan and others as alleged in said indictment, or any

of them, and that Frank S. Royster has not been within the State of Tennessee for the period of seven years next preceding the 14th day of July, 1906, and neither has he through himself, or through any agent, nor has any firm or corporation in which the said Royster is interested or of which he is an officer, agent or employee, ever done any business of any kind in the State of Tennessee within seven years next preceding said 14th day of July, 1906, except to purchase phosphate rock from the owners of mines in Tennessee. Nor has the defendant done, or performed, or been engaged in, or a party to any agreement, combination or conspiracy, in any other place or places, at any other time or times whatsoever in said District.

Thereupon counsel for the Government renewed its objections as aforesaid. After hearing counsel on both sides, the Court announced its conclusions as follows:—

"The conclusion reached by the court is that in a proceeding for the arrest and removal of persons charged with a violation of
152 a law of the United States pursuant to section 1014 of the Revised Statutes of the United States, before a United States District Judge, sitting in the State of Virginia, in which State there no longer exists the right of a preliminary examination upon a crime charged prior to the trial upon the merits, when said Judge is called upon to act as well in the matter of the apprehension of such persons, as in their removal to the jurisdiction in which they have been indicted, that upon the Government's presentation of a sufficient indictment, regularly found by a grand jury in a Court of the United States, properly charging the commission of an offense within the district in which such indictment is found, coupled with proof of the identity of the person indicted, it is its duty to properly bail such person for appearance before the Court in which he is indicted, or cause him to be removed thereto."

Therefore it was ordered that the testimony offered is inadmissible, and will not be received, and I therefore made the following order:

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The within named Frank S. Royster having been brought before me, and identified; and it appearing by a duly authenticated copy of the indictment that he stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," for violation of section one of the act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the
153 United States, it is ordered that the said Frank S. Royster give bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial before said court under the said indictment; or that in default thereof he be

imprisoned for seasonable removal to the said Middle District of Tennessee, to be there dealt with according to law.

Richmond, Va., July 14th, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

And after said order had been made and the defendant declined to give bond, the counsel for the United States moved that the warrant do issue directed to the Marshal of this District for the imprisonment and removal of the said Frank S. Royster to the Middle District of Tennessee, and his delivery to the custody of the United States Marshal of that district.

On such motion counsel for the said Frank S. Royster objected and again offered the said Frank S. Royster as witness, together with the other witnesses here-before referred to, to establish the same matters and facts as hereinbefore stated with regard to the objection to the order for the commitment of the said Frank S. Royster which testimony was again offered and was again objected to by the counsel for the United States on the same grounds as above set forth, and on the further ground that these matters could not now be inquired of in this stage of the proceedings, and was again excluded by the Court, to all of which counsel for the said Frank S. Royster duly excepted and had the exceptions noted and entered.

I therefore issued a warrant directed to the Marshal as follows:

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

Richmond, Va., July 14, 1906.

154 *Warrant of Imprisonment and Removal.*

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The President of the United States to the United States Marshal of the Eastern District of Virginia, Greeting:

Whereas it has been made to appear that Frank S. Royster stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said court entitled: "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," for violation of section one of the act of Congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States; and whereas the said Frank S. Royster having been brought before me, and identified; and a certified copy of said indictment furnishing probable cause to believe him to be guilty as therein charged, and whereas it was thereupon ordered by me that said defendant give bail in the sum of five thousand dollars with one or more sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial under said indictment, or that in default thereof he be imprisoned for seasonable removal to the said Middle District of

Tennessee to be there dealt with according to law; and the said defendant having failed and refused to give bail as required, therefore:

You are hereby commanded in the name and by the authority of the said United States to imprison the said Frank S. Royster in accordance with law, and that with all convenient speed you
155 remove him hence to the said Middle District of Tennessee and there surrender him to the Marshal of that District, there to be dealt with according to law.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

Richmond, Va., July 14, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

Richmond, Va., July 14, 1906.

Certificate of Clerk.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

I, G. E. Bowden, Clerk of the District Court of the United States for the Eastern District of Virginia, do hereby certify that the foregoing is a full and true transcript of the record and proceedings in the therein entitled cause made in obedience to the direction
156 in the return of the Honorable Edmund Waddill, Jr., Judge of said Court to the writ of certiorari, attached to and made a part of said record.

In witness whereof, I have hereunto set my hand and affixed the seal of the said District Court, at the City of Richmond, this 14th day of July, A. D. 1906.

[Seal United States District Court.]

G. E. BOWDEN,
Clerk United States District Court,
By JOSEPH P. BRADY,
Deputy Clerk U. S. District Court.

Certificate of United States District Judge.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

I, Edmund Waddill, Jr., Judge of the District Court of the United States for the Eastern District of Virginia do hereby certify that the foregoing is a full and true transcript of the record and proceedings had before me in the therein entitled cause.

In witness whereof, I hereunto set my hand and seal of said Court at Richmond, this 18th day of July, A. D., 1906.

[Seal United States District Court.]

EDMUND WADDILL, JR.,
United States District Judge.

157 *Conclusions of the Court.*

Filed July 14th, 1906.

In the United States Circuit Court for the Eastern District of Virginia.

In the Matter of the Petition of FRANK S. ROYSTER for Writs of *Habeas Corpus* and Certiorari.

FRANK S. ROYSTER, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

Petitioner alleges that he is unlawfully deprived of his liberty. He prays that by virtue of the writ of *Habeas Corpus*, he may be discharged from custody. I find from the petition, from its exhibits, and from respondent's reply that petitioner has been committed to the Marshal of the Eastern District of Virginia by an order of the United States District Judge of that District, with directions to remove petitioner to the Middle District of Tennessee, in order that he may be there tried on an indictment in which he with others, is charged with a violation of the laws of the United States. The proceedings so resulting were conducted under the provisions of section 1014 of the Revised Statutes of the United States. The Judge so hearing the matter, and so issuing said order of removal, acted in conformity with like proceedings, as provided for in criminal actions in the state of Virginia, in which state petitioner resides, and where the application for his removal was made.

158 On the hearing of this petition, I am asked to permit petitioner to offer testimony, the object of which is to show that probable cause does not exist as to petitioner's guilt of the offense of which he is charged; that he was not within the limits of the jurisdiction of the Middle District of Tennessee when said offense is alleged to have been committed; and testimony tending to show that he is innocent of the charge alleged in the indictment returned against him. Petitioner insists that he should not be removed to said Middle District of Tennessee for trial, but should be discharged from arrest. Should I, on this hearing, permit such testimony? I find from the record before me, that the indictment charges conspiracy; that it is alleged therein that petitioner with others, did in the Middle District of Tennessee, conspire to commit an offense against the laws of the United States. The indictment, in my judgment, sufficiently sets forth such offense. I find that it is in due form, and that it charges a crime; that it alleges a conspiracy such as is prohibited by the laws of the United States; and that an overt act, as described in the statute is charged as having taken

place in the Middle District of Tennessee. Such being the charge, I am of the opinion, under the law applicable thereto, that the personal presence of petitioner in said jurisdiction was not essential; and that he can be lawfully proceeded against in that district; and if the allegations set out in the indictment are sustained by competent evidence, that a conviction there can be upheld.

If such be the case, does it not follow that the testimony offered by the petitioner is immaterial? The indictment charges the commission of a crime; alleges that the petitioner with others committed it; and the laws authorizes his conviction in the district to which he has been ordered removed, if an overt act in pursuance of
159 said conspiracy was committed there. Technical objections to said indictment should not be considered by me on this hearing; they should only be heard by the court in which the indictment was returned.

While it is true that the order to remove for trial should only be issued in cases where probable cause has been shown, it is equally true that a certified copy of the indictment, with proof of the identity of the party accused, has been in a number of well considered cases, held to establish probable cause, and to authorize the warrant of removal. It must be conceded that the authorities are conflicting; but to my mind the path we should follow has been plainly indicated by the opinions of that great tribunal, whose mandates we all obey, whose judgments are the supreme law of the land. In Beavers *v.* Hanckel, 194 U. S., 73, the case rested on the efficacy of the indictment; for no other evidence of guilt was offered. The indictment was held to be *prima facie* evidence of the existence of probable cause. It satisfied the requirements of the constitution, and the laws made thereunder. Why should not the indictment in the case we now have under consideration serve the same purpose? The testimony tendered is, as I understand this case, immaterial, and the identity of the accused is admitted. His guilt or innocence is not to be ascertained by testimony offered in this jurisdiction, in connection with questions involved in the proceedings relating to the warrant of removal, or this writ of *habeas corpus*. That matter must go to the jury impaneled by the court in which the indictment was returned. To hold otherwise would result in inextricable confusion, and to discharge the petitioner on the showing now made, would tend to impede the due administration of justice; and can
160 only be done, in my opinion, by a strained construction of the statutes.

The writ will be dismissed, and petitioner will be remanded to the custody of the Marshal.

NATHAN GOFF,
U. S. Circuit Judge.

July 14th, 1906.

Order Dismissing Petition and Discharging Writ of Habeas Corpus and Allowing Appeal.

Filed July 14th, 1906.

In the Circuit Court of the United States for the Eastern District of Virginia.

In the Matter of the Petition of FRANK S. ROYSTER for Writs of *Habeas Corpus* and Certiorari.

FRANK S. ROYSTER, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

This cause was on this, the 14th day of July, 1906, heard before the Honorable, the Circuit Court of the United States for the Eastern District of Virginia, the Honorable Nathan Goff, Circuit Court Judge, presiding, upon the petition of said Frank S. Royster
161 in this cause and the return of the Marshal, the defendant, thereto, and the return of the District Judge of the Eastern District of Virginia (by agreement the copy of the findings and order of said District Judge being here now taken as his return to said writ of certiorari, and the motion of the petitioner, by his counsel, hereinafter mentioned.

The petition and the return of the Marshal thereto were read, and thereupon the petitioner presented himself as a witness and his counsel moved the Court that he be sworn in order to testify as such, and as such witness to prove the facts averred and set forth in said petition, which facts were then and there repeated and restated to the Court; and his counsel then also stated that the said witness, and other persons then present as witnesses, would testify and prove that the said facts set forth and averred in the petition and exhibits, and repeated by him to the Court, were true.

Thereupon the Honorable Edward T. Sanford, Special Counsel representing the United States, and also the defendant Marshal, objected to the swearing of the said petitioner as a witness and also to the admission of said evidence, upon the ground that said evidence was immaterial and irrelevant, and that it was not allowable to contradict or transverse by evidence in this Court the averments of the indictment which had been found against the petitioner in the Circuit Court of the United States for the Middle District of Tennessee, and that there was no error in the action of the District Judge. The objection so made was sustained, and the witness not allowed to be sworn nor allowed to testify to the facts above stated, to which action of the Court the petitioner then and there expected.

Thereupon it was ordered and adjudged by the said Court
162 that the petition be dismissed and the writ of *habeas corpus* heretofore issued in this cause upon the said petition be and the same is hereby dismissed and discharged; and that the said Frank S. Royster be remanded to the custody of said Morgan Treat, U. S. Marshal, for the Eastern District of Virginia, to be dealt with by him according to the directions of the writ of the process under which he had custody of the said Frank S. Royster.

Thereupon, the petitioner presented his petition, setting forth that he was aggrieved by the said order dismissing the said writ of *habeas corpus,* and praying that he be allowed to prosecute an appeal from said final order or judgment, to the Supreme Court of the United States under and according to the law of the United States in that behalf made together with his assignment of error in that behalf which appeal is allowed; and the petitioner having been allowed and the said appeal being hereby granted, the petitioner, by his counsel, thereupon moved the Court that he be enlarged or admitted to bail pending the decision of his said case upon said appeal; and thereupon it was accordingly ordered that the said petitioner and appellant be, and he is hereby enlarged upon his bond and admitted to bail, pending the said appeal to the Supreme Court of the United States; said bond to be in the penal sum of $5,000.00, to be taken and approved by the Clerk of this Court and conditioned for the said petitioner and appellant to appear before this Court to abide such order as shall be made by this Court upon the mandate of the Supreme Court of the United States upon the determination of petitioner's said appeal; and upon the execution by the said Frank S. Royster of such bond, with surety or sureties, to be approved by the Clerk of this Court, he will be enlarged and admitted to bail. The Clerk will take as surety any satis-
163 factory guaranty company.

The opinion of the Court in dismissing the petition and discharging the writ of *habeas corpus* is made part of the record herein and will be copied by the Clerk in the transcript on appeal.

NATHAN GOFF,
U. S. Circuit Judge.

July 14, 1906.

Appearance Bond.

Filed July 14th, 1906.

In the Circuit Court of the United States for the Eastern District of Virginia.

In the Matter of the Petition of FRANK S. ROYSTER for Writs of *Habeas Corpus* and Certiorari.

FRANK S. ROYSTER, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

We, as principal, and American Surety Company of New York a guaranty and surety company, organized and existing under the laws of the State of New York, with power and authority to become surety for principals in appearance bonds, jointly and severally acknowledge ourselves to owe and to be bound to the United States of America in the penal sum of Five Thousand Dollars ($5,000.00), severally to be made and levied of our goods, chattels, lands and tenements, if default be made herein.

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The condition of this obligation is as follows: Whereas the said Frank S. Royster, being detained in the custody of Morgan Treat, United States Marshal for the Eastern District of Virginia, under commitment and warrant of removal to the Circuit Court of the United States for the Middle District of Tennessee, granted by the Honorable Edmund Waddill, Jr., Judge of the District Court for the Eastern District of Virginia, presented his petition for and sued out a writ of *habeas corpus* from the Circuit Court of the United States for the Eastern District of Virginia, and the said writ of *habeas corpus* duly issued to the said Treat, Marshal, and he made his return thereto; and the said matter of *habeas corpus* came on for hearing before the said Circuit Court of the United States for the Eastern District of Virginia, on the 14th day of July, 1906, when by order thereof the said petition was dismissed and the said writ of *habeas corpus* discharged, and the said Frank S. Royster remanded to the custody of the said Morgan Treat, Marshal, to be proceeded with as provided by law; and

Whereas, from the said final order dismissing the said petition and writ of *habeas corpus,* the said Frank S. Royster prayed an appeal to the Supreme Court of the United States, which was granted and said appeal perfected; and

Whereas, the said Circuit Court of the United States allow- said appeal, ordered that pending said appeal the said Frank S. Royster upon the execution of a bond in the penal sum of Five Thousand Dollars ($5,000.00), conditioned as by said order was provided, might be enlarged and admitted to bail;

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Now, therefore, in compliance therewith, and in order to be so enlarged, the said Frank S. Royster as principal, and the said American Surety Company of New York, as surety, execute this bond upon the condition that, if the said Frank S. Royster shall duly personally appear in and before the Circuit Court of the United States for the Eastern District of Virginia, then and there to answer the exigency and determination of said appeal, and personally abide the final decision and determination of the said Supreme Court of the United States and of the said Circuit Court of the United States, upon the mandate of the said Supreme Court of the United States, and obey and abide the orders of said Circuit Court of the United States, and not depart without leave upon the conditions aforesaid, and upon the entry of said orders upon said appeal, then and in that event this bond or obligation shall be void; but otherwise it shall be and remain in full force and effect.

In witness whereof, the said Frank S. Royster as principal, and the said American Surety Company of New York as surety, the said surety being represented by and through Robert Le Masurier, its duly authorized agent and attorney, have hereunto on this the 14th day of July, 1906, set their hands.

FRANK S. ROYSTER. [SEAL.]

[Seal of American Surety Company.]

AMERICAN SURETY COMPANY OF NEW YORK,
By ROB'T LE MASURIER, *Agent.*

Signed, sealed and delivered in the presence of
JOSEPH P. BRADY, *Clerk.*

166 *Notice of Appeal.*

Filed July 14th, 1906.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of FRANK S. ROYSTER for Writs of *Habeas Corpus* and Certiorari.

FRANK S. ROYSTER, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia; JOSEPH P. BRADY, Deputy Clerk of the District Court of the United States for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

SIRS: Please take notice that Frank S. Royster petitioner above named hereby appeals to the Supreme Court of the United States from the final order made and entered on the 14th day of

July, 1906, by the Honorable Nathan Goff, Judge of the Circuit Court of the United States, Fourth Judicial Circuit of Virginia, discharging his application for writs of *habeas corpus* and certiorari and from each and every part of said order.

Dated at the City of Richmond, State of Virginia, on the 14th day of July, 1906.

Respectfully,

JOHN J. VERTRESS,
JAMES C. BRADFORD,
JOHN S. MILLER,
Attorneys for Petitioner and Appellant.

167 *Petition for Appeal.*

Filed July 14th, 1906.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of FRANK S. ROYSTER for Writs of *Habeas Corpus* and Certiorari.

FRANK S. ROYSTER, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

The petition of the above named petitioner Frank S. Royster for an order, allowing an appeal to the Supreme Court of the United States from the final order in the above styled cause, discharging the writs of *habeas corpus* and certiorari in this cause and remanding petitioner to the custody of the said Morgan Treat, United States marshal.

Frank S. Royster, the petitioner and appellant above named, feeling himself, aggrieved by the final order heretofore made and entered by this Court in this cause on the 14th day of July, 1906, whereby it was ordered that his petition for a writ of *habeas corpus*, directed to said Morgan Treat, United States Marshal, in and for the said District of Virginia, and his writ of certiorari, directed to Hon. Edmund Waddill, Jr., United States District Judge for said
168 District, commanding him to return all the proceedings, warrants, depositions, examinations, commitments and record of all proceedings against your petitioner to the Circuit Court of the United States, were, after the same had been duly granted and return made thereon by this Honorable Court, discharged, and petitioner was by said order remanded to the custody of said Morgan Treat, United States Marshal, as aforesaid.

Now come, Jno. J. Vertress and Jas. C. Bradford, his attorneys

and counsel, praying this court for an order allowing your petitioner to prosecute an appeal from said final order of the United States Circuit Court to the Supreme Court of the United States, and according to the laws of the United States in that behalf made.

Your petitioner is advised by his counsel that *in* the proceedings referred to in the petition for writs of *habeas corpus* and certiorari, and the said order discharging the same have infringed the constitutional rights of your petitioner and that the commitment of your petitioner and the restraint of his person referred to in said petition and under said order is without authority of law and that the said United States District Judge acting as United States Commissioner, before whom your petitioner was arraigned, as set forth in said petition hereinbefore referred to had no jurisdiction to either require bail of petitioner or to commit petitioner in default thereof, and your petitioner desires in good faith to submit the constitutional questions and other questions involved to the Supreme Court of the United States for their determination.

And your petitioner will ever pray, etc.

JOHN J. VERTRESS,
JAMES C. BRADFORD,
JOHN S. MILLER,
Attorneys for Petitioner and of Counsel.

169 UNITED STATES OF AMERICA, *Eastern District of Virginia:*

Frank S. Royster, being duly sworn on his oath, deposes and says that he is the petitioner above named, that the foregoing petition is true of his own knowledge, except as to those matters which are therein stated on his information and belief, and as to those matters, he believes them to be true.

—— ——.

Sworn to before me this 14th day of July, 1906.

JOSEPH P. BRADY,
Clerk of the United States Circuit Court,
Eastern District of Virginia.

Assignment of Errors.

Filed July 14th, 1906.

In the Supreme Court of the United States.

In the Matter of the Petition of FRANK S. ROYSTER for Writs of *Habeas Corpus* and Certiorari.

FRANK S. ROYSTER, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

The petitioner, Frank S. Royster, by John J. Vertress and
170 Jas. C. Bradford and John S. Miller, his Counsel in connection with his petition of appeal herein, entered herein, to the Supreme Court of the United States, from the final order made and entered in the United States Circuit Court of the Fourth Judicial Circuit in and for the Eastern District of Virginia, discharging the writs of *Habeas Corpus* and certiorari and remanding petitioner to the custody of the said Morgan Treat, Marshal, *and* makes and files the following assignment of errors:

1. The court erred in discharging the petitioner's writs of *Habeas Corpus* and Certiorari and remanding him to the custody of the United States Marshal.

2. In refusing to grant the prayer of said writs.

3. In refusing to discharge said petitioner.

4. In holding that the restraint of the petitioner's liberty is legal.

5. In holding that the restraint of your petitioner is not in violation of his substantial rights.

6. In holding that said alleged indictment or any count thereof stated an offence against the laws of the United States.

7. In holding that the alleged indictment, or any count thereof was sufficient upon which to base a warrant of removal.

8. In holding that there was sufficient evidence of probable cause.

9. In holding that the warrant of removal made by the United States District Judge for the Eastern District of Virginia was issued upon the finding of probable cause; and in not holding that said order & warrant of removal were unauthorized & void because said District Judge refused to receive or hear any evidence offered by petitioner.

10. In holding that the alleged indictment with proof of
171 identity was conclusive evidence of probable cause.

11. In holding that upon the introduction in evidence of the alleged indictment with proof of identity that the defendant, your petitioner, was not entitled to introduce evidence offered by him and in refusing to hear or receive any evidence offered by him

to show that the alleged offence, charged in said indictment and in each count thereof had not been committed by him in the State of Tennessee, in which state the indictment was found and in so holding, violating Article V and Article VI of the Amendments to the Constitution of the United States in that he was deprived of his liberty without due process of law.

12. In failing to hold that your petitioner is deprived of his liberty without due process of law in violation of Article V of the Amendments to the Constitution of the United States, in that said District Judge refused to hear or receive any evidence offered by your petitioner in that the complaint and evidence referred to herein, which were the sole authority for the petitioner's arrest and commitment as aforesaid failed to charge the petitioner with any crime against the laws of the United States.

13. In failing to hold that the petitioner's detention was in violation of Article V of the amendments to the Constitution of the United States in that the said United States District Judge, sitting as United States Commissioner and the United States District Judge has such jurisdiction to order the arrest and commitment of your petitioner, and that your petitioner is held to answer for a crime without any sufficient or valid indictment of a grand jury.

14. In failing to hold that restraint of your petitioner is in violation of Article IV of the Amendments to the Constitution of the United States, because it appears from the indictment upon
172 which the warrant in this case was issued that it was wholly void.

15. In failing to hold — the restraint of your petitioner is in violation of the provisions of Article IV of the amendments to the Constitution of the United States for the reasons particularly specified in his petition for a writ of *habeas corpus*.

16. In holding that a warrant of removal should issue for the reason that the proceedings conclusively show, by the indictment that the venue for the facts alleged in the indictment is not and was not in the Middle District of the State of Tennessee or in the State of Tennessee.

17. In failing to hold that the restraint of your petitioner is in violation of the provisions of Article VI of the amendments to the constitution of the United States for the reason that upon the proof offered to be made and rejected by the United States District Judge, sitting as a commissioner, and the United States District Judge and this Honorable Court, sitting upon the hearing of the petition of *habeas corpus*, and by the averments of said petition which were not controverted, it was conclusively shown that the offences charged in the indictment were not committed in the Middle District of the State of Tennessee or in the State of Tennessee, and that he could not be lawfully tried by a jury of the State of Tennessee and of the Middle District of Tennessee where said indictment was found.

18. In holding that the warrant of removal was properly issued, as the record and proceedings conclusively show that the alleged offence, complained of in the indictment and the several counts thereof, did not occur within the Middle District of the State of

Tennessee, or in the State of Tennessee, and that your pe-
173 titioner did not conspire to commit any offence within the State of Tennessee, or in the Middle District thereof.

19. In holding that your petitioner was lawfully in the custody of said Morgan Treat, United States Marshal in and for the Eastern District of Virginia, and was lawfully deprived of his liberty by him by due process of law.

20. For other errors appearing on the record, by reason whereof, the petitioner prays that the said order, discharging said writs of *Habeas Corpus* and Certiorari be reversed and the petitioner discharged from custody.

JOHN J. VERTRESS,
JAMES C. BRADFORD,
JOHN S. MILLER,
Attorneys for Petitioner and Appellant.

Appeal Bond.

Filed July 14th, 1906.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of FRANK S. ROYSTER for Writs of *Habeas Corpus* and Certiorari.

FRANK S. ROYSTER, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

174 Know all men by these presents, that, we, Frank S. Royster and James G. Tinsley his surety, are held and firmly bound unto the United States of America, in the full and just sum of Five hundred dollars to be paid to the United States, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this 14th day of July, 1906.

Whereas, lately, to-wit; on the 14th day of July, 1906, at the Circuit Court of the United States, in and for the Fourth Judicial Circuit, Eastern District of Virginia, in a proceeding therein pending, an order was entered discharging the writs of *habeas corpus* and certiorari, of the above named petitioner in the above mentioned proceeding and said petitioner having duly obtained an appeal from the said order to the Supreme Court of the United States and filed a copy thereof in the Clerk's office of said Circuit Court to review the same,

Now, the Condition of the Above Obligation, is such, that if the said petitioner Frank S. Royster, shall prosecute said appeal to effect and shall answer all costs if he should fail to make said appeal good, then this obligation to be void; else to remain in full force and effect.

FRANK S. ROYSTER. [SEAL.]
JAMES G. TINSLEY. [SEAL.]

Sealed, and delivered, and taken and acknowledged, this 14th day of July, 1906, before me,

JOSEPH P. BRADY, *Clerk.*

UNITED STATES OF AMERICA,
Eastern District of Virginia, To wit:

175 James G. Tinsley being duly sworn says that he is worth more than the sum of Five Hundred Dollars, over and above all his just debts and liabilities.

Sworn to before me this 14th day of July, 1906.

JOSEPH P. BRADY, *Clerk.*

Citation.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of FRANK S. ROYSTER for Writs of *Habeas Corpus* and Certiorari.

FRANK S. ROYSTER, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia; Jos. P. BRADY, Deputy Clerk of the District Court of the United States for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Judge L. L. Lewis, United States District Attorney for the Eastern District of Virginia; Jos. P. Brady, Clerk of the United States Circuit Court for the Eastern District of Virginia; Morgan Treat, United States Marshal in and for the Eastern District of Virginia; Hon. Edmund
176 Waddill, Jr., United States District Judge for the Eastern District of Virginia, and Jos. P. Brady, Deputy Clerk of the United States District Court for the Eastern District of Virginia:

You are cited and admonished to be and appear at the Supreme Court of the United States at the City of Washington, within thirty days from the date of this writ, pursuant to an appeal duly allowed

by the Circuit Court for the Fourth Judicial Circuit, Eastern District of Virginia and filed in the Clerk's Office of said Court on the 14th day of July, 1906, in the cause entitled, in the matter of the petition of Frank S. Royster for writs of *habeas corpus* and certiorari, Frank S. Royster, appellant, *versus* Morgan Treat, United States Marshal in and for the Eastern District of Virginia, Jos. P. Brady, Deputy Clerk of the District Court of the United States in and for said Eastern District of Virginia, and Hon. Edmund Waddill, Jr., United States District Judge in and for said Eastern District of Virginia, Appellees, to show cause, if any, why the final order of said Circuit Court, rendered against the appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Hon. Nathan Goff, Judge of the United States Circuit Court, this 14th day of July, A. D., 1906.

NATHAN GOFF,
Judge of the Circuit Court of the United States.

Acceptance of Service by United States District Judge.

Legal service of the within Citation is hereby acknowledged this 21st July, 1906.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

177 *Marshal's Return.*

Executed this 23rd day of July 1906, by delivering in person in the City of Richmond, Va., a true copy of the within citation to the following named persons viz: L. L. Lewis United States District Attorney for the Eastern District of Virginia, Joseph P. Brady Clerk of the United States Circuit Court for the Eastern District of Virginia, Joseph P. Brady Deputy Clerk of the United States District Court for the Eastern District of Virginia.

MORGAN TREAT,
United States Marshal.

Further executed this 23rd day of July 1906, by delivering in person in the City of Richmond, Va. to Morgan Treat United States Marshal for the Eastern District of Virginia, a true copy of this citation.

MORGAN TREAT,
United States Marshal,
By M. J. ENRIGHT,
Office Deputy Marshal.

178 *Order Transmitting Record.*

And thereupon, it is ordered by the Court here that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the Supreme Court of the United States of America, and the same is transmitted accordingly.

Teste:

JOSEPH P. BRADY,
Clerk United States Circuit Court.

Clerk's Certificate.

THE UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

I, Joseph P. Brady, Clerk of the Circuit Court of the United States for the Eastern District of Virginia, do hereby certify that the foregoing is a full and true transcript of the record and proceedings of the said Circuit Court, together with all things thereunto relating, in the therein entitled cause.

In testimony whereof, I hereunto set my hand and affix the seal of the said Circuit Court of the United States for the Eastern District of Virginia, at Richmond, this 10th day of August, A. D. 1906.

[Seal United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Endorsed on cover: File No. 20,341. E. Virginia C. C. U. S. Term No. 376. Frank S. Royster, appellant, *vs.* Morgan Treat, United States Marshal in and for the eastern district of Virginia, *et al.* Filed August 14, 1906. File No. 20,341.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 377.

J. RICE SMITH, APPELLANT,

vs.

MORGAN TREAT, UNITED STATES MARSHAL IN AND FOR THE EASTERN DISTRICT OF VIRGINIA, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

FILED AUGUST 14, 1906.

(20,342.)

(20,342.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906.

No. 377.

J. RICE SMITH, APPELLANT,

vs.

MORGAN TREAT, UNITED STATES MARSHAL IN AND FOR THE EASTERN DISTRICT OF VIRGINIA, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

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a In the Supreme Court of the United States.

In re Petition of J. RICE SMITH for Writs of *Habeas Corpus* and Certiorari.

J. RICE SMITH, Appellant,
vs.
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia; Jos. P. BRADY, Deputy Clerk of the District Court of the United States for the Eastern District of Virginia, and Hon. EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Judge L. L. Lewis, United States District Attorney for the eastern District of Virginia; Jos. P. Brady, Clerk of the United States Circuit Court for the eastern district of Virginia; Morgan Treat, United States Marshal in and for the eastern District of Virginia; Hon. Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia, and Jos. P. Brady, Deputy Clerk of the United States District Court for the eastern District of Virginia:

You are cited and admonished to be and appear at the Supreme Court of the United States at the City of Washington, within thirty days from the date of this writ, pursuant to an appeal duly allowed by the Circuit Court for the Fourth Judicial Circuit, Eastern District of Virginia, and filed in the Clerk's office of said Court on the 14th day of July, 1906, in the cause entitled, in the mater of the b petition of J. Rice Smith for writs of *habeas corpus* and certiorari, J. Rice Smith, Appellant, *versus* Morgan Treat, United States Marshal in and for the eastern District of Virginia, Jos. P. Brady, Deputy Clerk of the District Court of the United States in and for said eastern District of Virginia, and Hon. Edmund Waddill, Jr., United States District Judge, in and for said Eastern District of Virginia, Appellees, to show cause, if any, why the final order of said Circuit Court, rendered against the appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Hon. Nathan Goff, Judge of the United States Circuit Court, this 14th day of July, A. D., 1906.

NATHAN GOFF,
Judge of the Circuit Court of the United States.

c Legal service of the within citation is hereby acknowledged this 21st July, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge.

Executed this 23rd day of July 1906, by delivering in person in the City of Richmond, Va. a true copy of the within citation to the following named persons viz: L. L. Lewis United States District Attorney for the Eastern District of Virginia, Joseph P. Brady Clerk of the United States Circuit Court for the Eastern District of Virginia, Joseph P. Brady Deputy Clerk of the United States District Court for the Eastern District of Virginia.

MORGAN TREAT,
United States Marshal.

Marshal's Fees for service $6.00.

Further executed this 23rd day of July 1906 by delivering in person in the City of Richmond, Va. to Morgan Treat United States Marshal for the Eastern District of Virginia, a true copy of the within citation.

MORGAN TREAT,
United States Marshal,
By M. J. ENRIGHT,
Office Deputy Marshal.

Marshal's Fees for service $2.00.

d [Endorsed:] No. —. Circuit Court of the U. S., Eastern District of Virginia. In the matter of the Petition of J. Rice Smith for Writs of *Habeas Corpus* and Certiorari. J. Rice Smith, Appellant, *vs.* Morgan Treat, United States Marshal &c., *et als.*, Appellees. Citation. Filed this 14th day of July, 1906. Joseph P. Brady Clerk.

1 *Transcript of Record.*

THE UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

At a Circuit Court of the United States for the Eastern District of Virginia, begun and held at the Court Rooms in the Custom House, in the City of Richmond, Virginia, on the first Monday in April, being the second day of the same month, in the year of our Lord one thousand, nine hundred and six.

Present: The Honorable Nathan Goff, Judge of the Circuit Court of the United States for the Eastern District of Virginia.

Among other were the following proceedings, to-wit:

In the Matter of the Petition of J. RICE SMITH for Writs of *Habeas Corpus* and Certiorari.

J. RICE SMITH, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

2 *Petition for Writs of Habeas Corpus and Certiorari.*

Filed July 14, 1906.

In the District Court of the United States for the Eastern District of Virginia.

In the Matter of the Petition of J. RICE SMITH for Writs of *Habeas Corpus* and Certiorari.

J. RICE SMITH, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

To the Honorable the Judges of the Circuit Court of the United States for the Eastern District of Virginia:

The petition and complaint of J. Rice Smith, respectfully shows to the Court:

1.

That your petitioner is a citizen of the United States and is a citizen and resident of the Eastern District of Virginia, and is unlawfully imprisoned and restrained of his liberty by Morgan Treat, United States Marshal for the Eastern District of Virginia, in the City of Richmond, and County of Henrico, in said District.

3 That your petitioner is held by said Marshal under color and claim of authority of the United States, by virtue of a warrant for removal claimed to have been issued under section 1014 of the Revised Statutes of the United States, dated July 14, 1906, signed by the Honorable —— Waddill, Jr., Judge of the District Court of the United States for the Eastern District of Virginia, and has been committed and is detained only under and by virtue of said warrant, and not by a virtue of any judgment, decree or final order of any court.

2.

On the 14th day of July, 1906, at the said City of Richmond, in said District, complaint in writing signed and sworn

to by Morgan Treat, United States Marshal in and for said District, a copy of which is hereto attached, marked "Exhibit A," and made part hereof, was presented to the Honorable Edmund Waddill, Jr., Judge of the District Court of the United States for the said District, in and by which it was averred that he, the said Morgan Treat, United States Marshal, had good cause to believe and did believe that your petitioner, has been indicted by the Grand Jury of the Circuit Court of the United States in and for the Middle District of Tennessee, for that your petitioner on the 8th day of July, 1903, and during the period of time from that date until and on the first day of September, 1905, and being during said period agent and manager of the Virginia Carolina Chemical Company a corporation existing under the laws of the State of New Jersey did, in said Middle District of Tennessee, unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section 1 of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against restraints and monopolies," and that on the 8th day of July, 1903, at and within the County of Davidson, in the said
4 Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, your petitioner did unlawfully conspire with divers other persons and corporations to commit an offense against the United States, to-wit: The offense of engaging in a combination in restraint of trade and commerce among the several States of the United States, all as more fully set out in an indictment filed in the said Circuit Court of the United States in and for the Middle District of Tennessee on May 25th, 1906, a certified copy of which indictment said complaint states was thereto attached and made a part of said complaint, and in and by which said complaint, said complainant did, therefore, charge that your petitioner did commit the said offense against the United States in the manner and form as set forth in said indictment, and did furthermore aver in said complaint upon information and belief, that in pursuance of an order of the said Circuit Court of the United States for the Middle District of Tennessee, a Bench Warrant has been issued from said Court for the arrest of your petitioner and delivered to the Marshal of the said Court, who, after due search, had returned said warrant "Not found" in said Middle District of Tennessee and that your petitioner is now believed to be within the Eastern District of Virginia, of which District he is a resident.

And said complainant, said Morgan Treat, United States Marshal, in and by said complaint did therefore pray that your petitioner might be arrested, imprisoned, and removed or bailed, as the case might be, for trial before said Circuit Court of the United States for the Middle District of Tennessee, and further dealt with according to law; all of which will appear from the said complaint, a copy of which is hereto attached as aforesaid, reference thereto being hereby made for greater certainty. And that thereupon, to-wit, on the said 14th day of July, 1906, a warrant for his arrest
5 was issued by the Honorable Edmund Waddill, Jr., Judge as aforesaid, upon the aforesaid complaint, which came to the

hands of the said Morgan Treat, Marshal as aforesaid, and he, in obedience thereto, arrested your petitioner and brought him before the said Honorable Edmund Waddill, Jr., Judge as aforesaid, and made return of said warrant, endorsed thereon, and a copy of said warrant with the endorsement thereon is hereto attached marked "Exhibit B" and made a part hereof.

3.

That thereupon then and there, the United States Attorney in and for the said Eastern District of Virginia, for and on behalf of the United States, did offer and introduce in evidence to and before the said Judge, in support of the averments of the said complaint of said Morgan Treat, United States Marshal, a certified copy of the said indictment mentioned and referred to in the said complaint. A certified copy of said indictment so offered and introduced in evidence is hereto attached, marked "Exhibit C," and made a part hereof, and the identity of your petitioner with and as the J. Rice Smith mentioned and referred to in said indictment as one of the defendants therein, having been then and there admitted by your petitioner, the Government, the United States of America, introduced or offered no other or further proof or evidence in support of the said complaint or of the averments therein, but rested its case upon the said hearing of the said complaint before the said Judge.

4.

That thereupon, then and there, your petitioner, by his counsel, proceeded to offer, and offered, proof and evidence by
6 witnesses then and there present to show that your petitioner did not within the said Middle District of Tennessee, on the 8th day of July, 1903, or during the period between the 8th day of July, 1903 and the 1st day of September, 1905, or at any other time, engaged in the said alleged conspiracies in the said indictment mentioned, or any or either of them, or at any time or at any place, join in or assent to the said alleged conspiracies, engaged in or entertained upon in said Middle District of Tennessee, or any or either of them, or at any time or at any place do any act in furtherance of, or to effect the object of said alleged conspiracies, engaged in in said Middle District of Tennessee, or any or either of them. Thereupon, then and there, the Counsel for the Government, upon the said hearing, did object to the introduction on the behalf of your petitioner of the said evidence or any evidence or proof tending to contradict or controvert the respective averments, or any or either of them in the said indictment and in the respective counts thereof, viz: that your petitioner did engage in the said alleged conspiracy in said indictment mentioned and referred to, in the said Middle District of Tennessee, in manner and form as in the said indictment in that behalf averred, or to contradict or controvert or disprove any of the averments in the said indictment contained,—on the ground, then and there stated, that upon the said hearing of said complaint the said certified copy of the said indict-

ment was conclusive evidence of every fact therein averred to sustain and prove upon the said hearing the said complaint of the said Morgan Treat, United States Marshal, and the averments thereof, and the probable cause of the commission by your petitioner of the said supposed offenses in the said indictment mentioned and of any and every of them in the manner and form as in the
7 said indictment averred, and in that behalf, your petitioner then and there took the witness stand and demanded to be sworn as a witness in his own behalf, but the Counsel for the Government objected, and the objection was by said Judge sustained, and he was not permitted to be sworn or to testify.

5.

That thereupon, then and there, your petitioner by his counsel stated to the Judge that he would prove, and then and there his said counsel offered to prove by your petitioner as a witness and by other witnesses then and there present the following facts, which facts are true, that is to say:

That he was not on the eighth day of July, 1903, or during the period of time between the eighth day of July 1903, and the first day of September, 1905, in the State of Tennessee, or the Middle District of Tennessee and that he has not been in the Middle District of Tennessee or the State of Tennessee since June, 1901; that he did not enter, assent to, join, or engage in the conspiracies in the indictment mentioned, or any of them within the Middle District of Tennessee at the time mentioned therein, or at any other time; that he did not within the period mentioned, or at any other time within the Middle District of Tennessee do any act or thing to promote or further the said conspiracies in the indictment mentioned or any of them, or to effect the object or purposes thereof; that he did not at any time or any place join, assent to, enter or engage in the conspiracies or any of them, engaged in the Middle District of Tennessee, alleged or averred in the said indictment.

6.

That the United States Attorney, on behalf of the Govern-
8 ment, then and there objected to the introduction or reception by the said Judge of the said evidence so offered on behalf of your petitioner, and to each and every part thereof, on the ground hereinbefore stated, which objection was then and there sustained by the Court, on the ground that the said certified copy of the said indictment so introduced on behalf of the Government, the identity of your petitioner as aforesaid being admitted by your petitioner as aforesaid, was conclusive evidence of the existence of every fact stated in the indictment, including the averments that the conspiracies alleged in the said indictment were engaged in in the Middle District of Tennessee, and that therefore said evidence or any evidence offered by and on behalf of your petitioner to controvert, contradict or disprove the averments of the said indictment in that behalf, or any or either of them, was incompetent and inadmissible; and the said Judge, then and there, on the grounds aforesaid,

excluded and refused to receive said evidence so offered on behalf of your petitioner, or any part thereof, to which ruling of the Judge, your petitioner then and there, by his counsel, duly excepted.

7.

That thereupon the said Judge, upon the complaint and upon the evidence so introduced for and on behalf of the Government as aforesaid, made and signed a certain order reciting his said rulings as aforesaid and ordering as in said order appears, which said order is as follows:

THE UNITED STATES OF AMERICA,
Eastern District of Virginia:

THE UNITED STATES
vs.
J. RICE SMITH.

9 This is an application under the provisions of section 1014 of the United States Revised Statutes for a warrant for the removal of J. Rice Smith to the Middle District of Tennessee and comes before me as follows:—

The District Attorney for this District, together with Mr. E. T. Sanford, Counsel for the United States, presented to me, a verified complaint of Morgan Treat, United States Marshal for this District, with the certified copy of an indictment filed on May 25th, 1906, in the Circuit Court of the United States for the Middle District of Tennessee in the case of the United States *vs.* Virginia-Carolina Chemical Company and other defendants, including among such defendants the said J. Rice Smith.

Said complaint and copy of said indictment are made parts of this order.

Upon the exhibition of this indictment and affidavit and the *ex parte* motion of the counsel for the United States, I made an order for the arrest of said J. Rice Smith and his production before me.

This order was duly executed by the said Marshal, who arrested the said J. Rice Smith and brought him before me in Richmond on this 14th day of July, 1906, as shown by his return. When the accused was so brought before me it was moved by the Counsel for the United States that inasmuch as the indictment charged offenses against the United States triable in the Circuit Court of said United States for the Middle District *District* of Tennessee, and the identity of the defendant was admitted, that an order be forthwith made for the commitment of said J. Rice Smith for trial before said Circuit Court.

10 This motion was made upon the certified copy of the indic-ment without any further testimony, the idenity of the party arrested and brought before me with the J. Rice Smith mentioned in the indictment being admitted.

And thereupon the defendant, J. Rice Smith offered himself as a witness in his own behalf, and being about to be

sworn, the United States, by its Counsel, thereupon objected to the witness being sworn, or to any testimony being given in rebuttal of the indictment in these proceedings, on the ground that the identity of the defendant being admitted, inasmuch as the indictment on its face charges offenses against the United States committed and triable in the jurisdiction in which the defendant stands indicted, no evidence is admissible here to impeach the indictment, and the order of the commitment should be made without other proof.

The defendant's counsel thereupon offered to prove by the defendant, and other witnesses then and there present, that the Circuit Court for the Middle District of Tennessee had no jurisdiction over the person of said defendant touching the offense charged in said indictment, in that defendant and said other witnesses would, if permitted, testify.

That he was not on the 8th day of July, 1903, or during the period of time between the eighth day of July 1903, and the first day of September, 1905, in the State of Tennessee, or the Middle District of Tenessee, and that he has not been in the Middle District of Tennessee or the State of Tennessee since June, 1900; that he did not enter, assent to, join, or engage in the conspiracies in the indictment mentioned, or any of them within the Middle District of Tennessee at the time mentioned therein, or at any other time; that he did not within the period mentioned, or at any other time within the Middle District of Tennessee do any act or thing to pro-
11 mote or further the said conspiracies in the indictment mentioned or any of them, or to effect the object or purposes thereof; that he did not at any time or any place join, assent to, enter or engage in the conspiracies, or any of them, alleged or averred in the said indictment in the Middle District of Tennessee nor has defendant done, or performed, or been engaged in, or a party to the same, or any of them in any other place or places at any other time or times whatsoever.

Thereupon Counsel for the Government renewed its objections as aforesaid.

After hearing counsel on both sides the Court announced its conclusions as follows:—

"The conclusion reached by the Court is that in a proceeding for the arrest and the removal of persons charged with a violation of the laws of the United States pursuant to section 1014 of the Revised Statutes of the United States, before a United States District Judge, sitting in the State of Virginia, in which State there no longer exists the right of a preliminary examination upon a crime charged prior to the trial upon the merits, when said Judge is called upon to act as well in the matter of the apprehension of such persons, as in their removal to the jurisdiction in which they have been indicted, that upon the Government's presentation of a sufficient indictment regularly found by a grand jury in a court of the United States, properly charging the commission of an offense within the district in which such indictment is found, coupled with proof of the identity of the person indicted, it is its duty to prop-

erly bail such person for appearance before the court in which he is indicted, or cause him to be removed thereto."

Therefore it was ordered that the testimony offered is inadmissible, and will not be received, and I therefore made the following order:

12 UNITED STATES OF AMERICA,
Eastern District of Virginia, set:

The within named J. Rice Smith having been brought before me, and identified; and it appearing by a duly authenticated copy of an indictment that he stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," for violation of section one of the act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States it is ordered that the said J. Rice Smith give bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial before said Court under the said indictment; or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee, to be there dealt with according to law.

Richmond, Va., July 14, 1906.

(Signed) EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

And after said order had been made and the defendant declined to give bond, the Counsel for the United States moved that the warrant do issue directed to the Marshal of this District for the imprisonment and removal of the said J. Rice Smith to the Middle District of Tennessee, and his delivery to the custody of the United States Marshal of that District.

13 On such motion counsel for the said J. Rice Smith objected and again offered the said J. Rice Smith as a witness, together with the other witnesses herebefore referred to, to establish the same matters and facts as hereinbefore stated with regard to the objection to the order for the commitment of the said J. Rice Smith, which testimony was again offered and was again objected to by the counsel for the United States on the same grounds above set forth, and on the further ground that these matters could not now be inquired of in this stage of the proceedings, and was again excluded by the Court, to all of which counsel for the said J. Rice Smith duly excepted and had the exceptions noted and entered.

(Signed) EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

I therefore issued a warrant directed to the Marshal as follows:

Warrant of Imprisonment and Removal.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The President of the United States to the United States Marshal of the Eastern District of Virginia, Greeting:

Whereas it has been made to appear that J. Rice Smith stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said court entitled: "The United States *vs.* Virginia-Carolina Company *et al.*," for violation of section one of the act of Congress entitled "An Act to protect
14 trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States; and whereas the said J. Rice Smith having been brought before me, and identified; and a certified copy of said indictment furnishing probable cause to believe him guilty as therein charged, and whereas it was thereupon ordered by me that said defendant give bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial under said indictment, or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee to be there dealt with according to law; and the said defendant having failed and refused to give bail as required, therefore;

You are hereby commanded in the name and by the authority of the said United States to imprison the said J. Rice Smith in accordance with law, and that with all convenient speed you remove him hence to the said Middle District of Tennessee and there surrender him to the Marshal of that District, there to be dealt with according to law.

Richmond, Va., July 14, 1906.

(Signed) EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

Richmond, Va., July 14th, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

8.

Your petitioner further says that he is advised, and he charges and submits, that under and by virtue of Clause 3, of Section 2, of Article 3, of the Constitution of the United States, and of the Sixth Amendment to the said Constitution, your petitioner is enti-
15 tled to be tried and can only be indicted and tried for any alleged offenses against the laws of the United States, in the State and District in which the offense, which the indictment charges, was committed; that the said supposed offenses in the said indictment mentioned and charged, were not, nor was any or either of

them, committed in the said Middle District of Tennessee; that none of the alleged acts, transactions, matters or things which are in the said indictment mentioned or referred to as being and constituting the supposed engaging by this defendant in the said alleged conspiracies in the said indictment referred to, or any or either of them, were done or held or took place within the said Middle District of Tennessee, and no alleged act, transaction, matter or thing, in the said indictment mentioned or referred to as being the doing by this defendant of an act to effect the object of said conspiracy was done or held or took place within the said Middle District of Tennessee;

That he was not on the 8th day of July, 1905, or during the period of time between the eighth day of July, 1903, and the first day of September, 1905, in the State of Tennessee, or the Middle District of Tennessee, and that he has not been in the Middle District of Tennessee or the State of Tennessee since June, 1900; that he did not enter, assent to, join, or engage in the conspiracies in the indictment mentioned, or any of them within the Middle District of Tennessee at the time mentioned therein, or at any other time; that he did not within the period mentioned, or at any other time within the Middle District of Tennessee do any act or thing to promote or further the said conspiracies in the indictment mentioned or any of them, or to effect the object or purposes thereof; that he did not at any time or any place join, assent to, enter or engage in the conspiracies, or any of them in the Middle District of Tennessee,
16 alleged or averred in the said indictment; that he did not do any act in pursuance of the said alleged conspiracies in the said indictment mentioned, or any or either of them engaged in in the Middle District of Tennessee, in furtherance of the said alleged conspiracies in said indictment mentioned, or any or either of them, or to effect the object of the same, or as an act on the part of your petitioner of engaging in the same.

9.

That thereupon, the United States Attorney moved the commitment of your petitioner to the Marshal of the said District for removal to the Middle District of Tennessee for trial upon the indictment in the United States Circuit Court for said District, and the said Attorney for the United States thereupon made a motion before the Honorable Edmund Waddill, Jr., Judge, for the issuance of a warrant for the removal of your petitioner to the Middle District of Tennessee for trial as aforesaid in the United States Circuit Court for said District upon the said indictment, and the said motion was allowed, and said warrant was in pursuance thereof issued by the said Judge, and a copy thereof is embraced in the order of the said Judge hereinbefore recited as and made a part hereof. That thereupon the said Marshal of the Eastern District of Virginia, to whom the said warrant was directed, took your petitioner into custody upon the said warrant and now holds your petitioner thereunder and threatens to take and remove your petitioner to the Middle District of Tennessee, as directed by the said warrant and

will do so, unless your Honor shall issue the writ of *Habeas Corpus* herein prayed for. Your petitioner further says that in case your petitioner is removed under the said warrant to the said Middle District of Tennessee for trial upon said indictment and is there held
17 for trial and tried upon said indictment, your petitioner will not be tried within the District in which the said alleged offenses charged in the said indictment were committed, as required by the Sixth Amendment to the Constitution of the United States, and by Clause 3, of Section 2, of Article 3 of said Constitution, and will be tried in violation of his rights under said provisions of the said Constitution. Your petitioner further says that he is advised, and he charges, that the said indictment does not charge the commission by your petitioner of any offense against the laws of the United States, and that same is in that behalf insufficient and void.

10.

That the imprisonment and detention of your petitioner is without authority of law, and the said proceedings before said United States District Judge are illegal and the said warrant of removal was illegally issued and in violation of Article 3, Section 2, of the Federal Constitution, and of the Sixth Amendment to the said Constitution; and that then and there by the said rulings of the said District Judge, in the exclusion of the said evidence and in holding that the said certified copy of the indictment was conclusive evidence as aforesaid, and in refusing to permit your petitioner to introduce any evidence on his behalf, as aforesaid, your petitioner was deprived of rights secured to him by the said provisions of the said Constitution and by section 1014 of the Revised Statutes, and was and is by said Morgan ——, United States Marshal, deprived of his liberty without due process of law.

Wherefore your petitioner prays that a writ of *Habeas Corpus* be issued, directed to the said United States Marshal of the
18 Eastern District of Virginia, who has your petitioner in custody, demanding him to bring the body of your petitioner before this Court forthwith; and further that a writ of Certiorari be directed to the said Honorable Edmund Waddill, Jr., Judge as aforesaid, commanding that he return all proceedings against this petitioner to this court forthwith, for such action as may be proper in the premises.

J. RICE SMITH,
JOHN PICKRELL, *Att'y.*

H. A. M. SMITH,
JOHN J. VERTRESS,
JAMES C. BRADFORD,
MARCELLUS GREEN,
Counsel.

UNITED STATES OF AMERICA,
Eastern District of Virginia, County of Henrico, ss:

J. Rice Smith being duly sworn, deposes and says that he has read the foregoing petition, and knows the contents thereof, and that the same is in all respects true. J. RICE SMITH.

Sworn to and subscribed to before me *in* this 14th day of July, 1906.

JOSEPH P. BRADY,
Clerk U. S. Circuit Court.

19 EXHIBIT A.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

On this 14th day of July, A. D. 1906, at the City of Richmond, in the said District, before the Honorable Edmund Waddill, Jr., Judge of the District Court of the United States of America for the said District, comes Morgan Treat, United States Marshal in and for the said District, and upon his oath complains and says: that he has good cause to believe and does firmly believe that J. Rice Smith of Richmond, Va. stands indicted by the grand jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said J. Rice Smith on the eighth day of July in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, being during said period Agent and Manager of the Virginia Carolina Chemical Co., a corporation existing under and by the laws of the State of New Jersey did in the said Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said J. Rice Smith did unlawfully conspire with divers other persons and corporations to commit an offense against the United States, to-wit, the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States, all as more fully set out in an indictment filed in the said Circuit Court of the United States in and for the Middle District of Tennessee on May 25,
20 1906, in cause No. 963, entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al,*" a certified copy of which indictment is hereto attached and made a part of this complaint; and complainant therefore charges that the said J. Rice Smith did commit the said offenses against the United States in manner and form as set forth in said indictment.

Complainant furthermore avers upon information and belief that in pursuance of an order of said Circuit Court of the United States for the Middle District of Tennessee a bench warrant has been issued from said Court for the arrest of said J. Rice Smith and delivered to the Marshal of said Court, who, after due search, has returned said warrant "not found" in said Middle District of Tennessee; and that said J. Rice Smith is now believed to be within the Eastern District of Virginia, of which District he is a resident.

Wherefore this complainant prays that the said J. Rice Smith may be arrested and imprisoned and removed or bailed, as the case

may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee, and further dealt with according to law.

(Signed) MORGAN TREAT, *Marshal.*

Subscribed and sworn to before me by the above named Morgan Treat the day and year first above written.

EDMUND WADDILL, JR., *Judge.*

21 EXHIBIT B.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

To the Marshal of the Eastern District of Virginia, Greeting:

Whereas complaint in writing on oath, has been made to me charging that J. Rice Smith of Richmond, Va. stands indicted by the grand jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said J. Rice Smith on the eighth day of July, in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, did in the Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said J. Rice Smith did unlawfully conspire with divers other persons and corporations to commit an offense against the United States, to-wit, the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States; and application has been made to me that the said J. Rice Smith may be arrested and imprisoned and removed or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee;

Now therefore, you are hereby commanded to arrest the
22 said J. Rice Smith if he be found within your said District, and bring him forthwith before me at my Chambers in Richmond, in order that me may be dealt with according to law.

EDMUND WADDILL, JR.,
District Judge.

Richmond, July 14, 1906.

Pursuant to the within writ, I have taken the defendant J. Rice Smith into custody and now have him before Hon. Edmund Waddill Jr. United States District Judge for the Eastern District of Virginia.

MORGAN TREAT,
United States Marshal.

July 14th, 1906.

23 EXHIBIT C.

In the Circuit Court of the United States of America for the Middle District of Tennessee, of the April Term, in the Year of Our Lord Nineteen Hundred and Six.

MIDDLE DISTRICT OF TENNESSEE, *sct:*

The grand jurors for the United States of America, inquiring for the Middle District of Tennessee, upon their oath present, that before and on the eighth day of July, in the year of our Lord nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year of our Lord nineteen hundred and five, the following named corporations, respectively organized and existing under and authorized by the laws of the several States and of the foreign country here named in connection with them, and hereafter in this indictment called corporation defendants, to wit, the Virginia-Carolina Chemical Company, of New Jersey, Armour and Company, of Illinois, the Acme Manufacturing Company, of North Carolina, the Alabama Chemical Company, of New Jersey, the Anderson Phosphate & Oil Company, of South Carolina, the Ashepoo Fertilizer Company, of South Carolina, the Blackshear Manufacturing Company, of Georgia, the Etiwan Fertilizer Company, of South Carolina, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, The Furman Farm Improvement Company, of Georgia, the Goulding Fertilizer Company, Limited, of Great Britain and Ireland, The Goulding Fertilizer Company, of Florida, the Gulfport Cotton Oil, Fertilizer & Manufacturing Company, of Georgia, the Home Mixture Guano Company, of Georgia, the Jackson Fertilizer Company, of Mississippi, the Marietta Fertilizer Company, of Georgia, the Meridian Fertilizer Factory, of Mississippi, the National Fertilizer Company, of Tennessee, the New Orleans Acid and Fertilizer Company, of New Jersey, the Old Dominion Guano Company, of Georgia, the Planters Chemical Company, of Alabama, the
24 Read Phosphate Company, of West Virginia, the F. S. Royster Guano Company, of Virginia, the Savannah Guano Company, of Georgia, the Southern States Phosphate and Fertilizer Company, of Georgia, the Standard Chemical & Oil Company, of Alabama, the Standard Guano and Chemical Manufacturing Company, of Louisiana, Swift & Company, of Illinois, the Tennessee Chemical Company, of Tennessee, and the Tennessee Valley Fertilizer Company, of Alabama, and certain firms, to wit, the firm of A. D. Adair and McCarty Brothers and the firm of Wilcox, Ives & Company, did carry on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereafter in this indictment called the States of the conspiracy, as wholesale dealers in complete and alkaline fertilizers and in acid phosphates, nitrates, and potash salts suitable for fertilizers, which then were useful and valuable

articles of merchandise, indispensable for use on the soil of the said States of the conspiracy in order that the staple crops of those States might be raised therefrom; that the following named persons, hereafter in this indictment called individual defendants, to wit, Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, of the said Virginia-Carolina Chemical Company, and J. Rice Smith, agent and manager of the said Virginia-Carolina Chemical Company, and president of the Georgia Chemical Works hereinafter mentioned, Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, Fred G. Brown, president and treasurer of the said Anderson Phosphate & Oil Company, Frank Burbidge, president, and William J. McCormack, treasurer, of the said Etiwan Fertilizer Company, George Braden, president of the said Federal Chemical Company, of Delaware, and also of the said Federal Chemical Company, of Kentucky, Augustus D. Adair and James D. McCarty, officers and agents of the said Furman Farm Improvement Company and members of the said firm of A. D. Adair and McCarty Brothers, William DeC. Kessler, secretary and treasurer of the said Goulding Fertilizer Company, Limited, James G. Tinsley, president of the said Marietta Fertilizer Company and vice-president of the said Tennessee Chemical Company, William D. Rhea, general manager of the said National Fertilizer Company, William L. Peel, president of the said Old Dominion Guano Company, Abram C. Read, vice-president and general manager, and Isaac Mayo Read, agent, of the said Read Phosphate Company, Frank S. Royster, president, and Charles F. Burroughs, vice-president, of the said F. S. Royster Guano Company, A. J. Ives, whose Christian name is to the said grand jurors unknown, secretary and treasurer of the said Savannah Guano Company and a member of the said firm of Wilcox, Ives & Company, T. Porter Fleming, vice-president of the said Southern States Phosphate and Fertilizer Company, and T. Garland Tinsley, president and treasurer of the said Tennessee Chemical Company, in their said several capacities as officers, managers, agents, and attorneys of the said corporation defendants and members of the said firms, and on behalf of those corporations and firms, during the period of time in this indictment first aforesaid, did carry on the business aforesaid; that in so carrying on the said business the said defendants, that is to say, the said corporation and individual defendants did sell and deliver large quantities of the said merchandise within the limits of the said States of the conspiracy from the respective places of business of the said corporation defendants and the said firms, located at different points within those States, to retail dealers in and consumers of such merchandise, in such States respectively, and did also ship large quantities of the same from their respective places of business, located in the said States of the conspiracy and also in the States of Virginia, Illinois, and Kentucky, into and through other of the said States than those in which their said places of business were located; that in so carrying on the said busi-

ness and shipping the said merchandise from one of the said States into and through another or others thereof, the said defendants, during the period aforesaid, were engaged in trade and commerce among the States of this Union within the meaning of the Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in so carrying on the said business, trade and commerce, the said Virginia-Carolina Chemical Company and the said Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, and J. Rice Smith, agent and manager, of the said Virginia-Carolina Chemical Company, did make use of and operate a portion of their said business, trade and commerce through each of certain other corporations, to wit, the American Fertilizer Company, of Virginia, the Birmingham Fertilizer Company, of Alabama, the Coweta Fertilizer Company, of Georgia, the Georgia Chemical Works, of Georgia, the Navassa Guano Company, of North Carolina, of either the whole or a majority of the capital stock of which said corporations respectively the said Virginia-Carolina Chemical Company was the owner;

26 that in so carrying on the said business, trade and commerce, the said Armour and Company and the said Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, did make use of and operate all of their said business, trade and commerce through a certain other corporation called the Tuscarora Fertilizer Company, of New Jersey, and a certain trade name, to wit, the trade name of Armour Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Furman Farm Improvement Company and the said firm of A. D. Adair and McCarty Brothers did make use of and operate a portion of their said business trade, and commerce under the trade name of Chickamauga Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Federal Chemical Company, of Delaware, and the said Federal Chemical Company of Kentucky, did make use of, and operate a portion of their said business, trade and commerce through, the names of Century Phosphate Company, Fox Chemical Company, Branch Globe Fertilizer Company, Branch and Tennessee Phosphate Company; that in so carrying on the said business, trade and commerce, the said National Fertilizer Company did make use of, and operate a portion of its said business, trade and commerce through, the corporate name of American Guano Company and the trade name of Nashville Guano Company; that in so carrying on the said business, trade and commerce, the said Read Phosphate Company did make use of, and operate a portion of its said business, trade and commerce through the corporate name of Empire Guano Company; that in so carrying on the said business, trade and commerce, the said F. S. Royster Guano Company did make use of, and operate a portion of its said business, trade and commerce through the trade name of Atlantic Chemical Company and the corporate name of Columbia Guano Company; that in so carrying on the said business, trade and

commerce, the said Swift and Company did make use of, and operate the whole of its said business, trade and commerce through, the trade name of Swift Fertilizer Works; and that in so carrying on the said business, trade and commerce, the said Tennessee Chemical Company did make use of, and operate a portion of its said business, trade and commerce through, the trade name of Continental Fertilizer Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that of the total volume of such business, trade and commerce then so being carried on by the said defendants and their competitors, the said defendants together had and controlled the principal part, that is to say, ninety per centum thereof; and
27 that because the said corporation defendants and the said firms were in fact separate and distinct from each other, they should have conducted their interstate trade and commerce strictly in competition with each other, during the said period, and then would have so conducted the same but for the unlawful conspiracy in restraint of the said business, trade and commerce in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, at and within the said Middle District of Tennessee, in violation of the provisions of said section one of the said Act of Congress, unlawfully did knowingly engage in a conspiracy in restraint of the said business, trade and commerce, so then being carried on by them in the manner aforesaid, whereby the said business, trade and commerce was restrained in the several ways and by the several means now here set forth and described, that is to say:

Competition as to the prices at which the said merchandise was sold and delivered by the said corporation defendants and the said firms in the said States of the conspiracy, which before the period of time in this indictment first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was prevented and destroyed by the said defendant from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them styled "current, reasonable market prices," for the said merchandise so sold and delivered by the said corporation defendants and the said firms in those States, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so fixed and caused to be fixed; which said uniform and non-competitive prices were prices greatly in excess of the prices which but for the said unlawful conspiracy would at such times have prevailed for the said merchandise in the said business, trade and commerce, and were prices therefore unreasonable, and were a tax on the people of the said States of the said conspiracy amounting to a large sum of money, to wit, four million dollars, annually during the continuance of the same.

For and on account of such quantity of the said merchandise as was sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts allotted and caused

to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and
28 delivered in excess, was, by the corporation defendants and firms so selling and delivering the same, paid into a common fund, held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, compensated, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as sold and delivered less than the amounts so allotted to them respectively, so it was not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy that each of the said corporation defendants and of the said firms also paid into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment to be the absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm, in disposing of its said allotment in carrying on the said business, trade and commerce, on its part faithfully should exercise every reasonable effort and due business diligence to maintain the prices so fixed and caused to be fixed as aforesaid and pay into the said fund the sum accruing to the same on account of its said excess sales, in which case an equal amount was returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also made uniform and non-competitive as between all of the said corporation defendants and the said firms, in the said business, trade and commerce, among the said States of the conspiracy.

As a convenient intermediary and common agent between the said corporation defendants and the said firms, respectively and as a means of securing their co-operation in carrying out the said unlawful conspiracy, the said defendants made use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company, Limited, was also allowed and required to collect, hold, use and distribute the said fund
29 arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that, in pursuance of the said unlawful conspiracy,

and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of September, in the year nineteen hundred and three, during the period of time aforesaid, at and within the City of New York, in the State of New York, unlawfully did knowingly deposit with the Continental Trust Company, of the said City of New York, the sum of twenty-six thousand dollars, in connection with the purchase *of* by the said trust company on behalf of the said Virginia-Carolina Chemical Company, and in the name of one Montrose Stuart, a clerk in the office of the said trust company, of twenty-six hundred shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Samuel T. Morgan, on the seventh day of October, in the same year nineteen hundred and three, and during the period of time aforesaid, at and within the said city of New York, in the State of New York, unlawfully did deliver to the said William DeC. Kessler, Vice-President of the said Colonial Development Company, Limited, three checks drawn by the said Virginia-Carolina Chemical Company, one upon the National City Bank, of New York City aforesaid, for eighty thousand dollars, another on the Bank of America, of New York City aforesaid, for fifty thousand dollars, and the other on the National Park Bank, of New York City aforesaid, for thirty-five thousand and four hundred and sixty-eight dollars, aggregating one hundred and sixty-five thousand and four hundred and sixty-eight dollars, as and for a payment, by the said Virginia-Carolina Chemical Company, to the said Colonial Development Company, Limited, of twenty cents a ton on its allotment under the said unlawful conspiracy; he the said Samuel T. Morgan, when and where he so as aforesaid delivered the said checks to the said William DeC. Kessler, well knowing the character and purpose of the same, and well knowing that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as acts on their parts respectively of engaging in the same, the said Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, on the seventeenth day of September, in the year nineteen hundred and three, and during the period aforesaid, at the said City of New York, in the said State of New York, unlawfully did meet together to discuss and further the object of the said unlawful conspiracy; they the said Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred G. Brown,

Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, when and where they so as aforesaid met together, each well knowing the character and purpose of the said meeting, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank E. Wilcox, on the first day of November, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did deliver to one W. W. Perkins, Secretary of the said American Fertilizing Company, a certain document, too voluminous to be here set forth, stating certain prices and terms of sale, fixed in pursuance of the said unlawful conspiracy, for the said fetilizer merchandise, in the States of North Carolina, South Carolina, Georgia, Florida, Alabama and Tennessee, for the spring season of the year nineteen hundred and four; he the said Frank E. Wilcox at the time and place when and where he so as aforesaid delivered the said document to the said W. W. Perkins, well knowing the character of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, and during the period of time aforesaid, at the town of Decherd, in the said Middle District of Tennessee, by and through one
31 F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, and during the period aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, and during the period of time aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at the City of Nashville, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, a certain notice of shipment, partly written and partly printed, in the words and figures following, that is to say:

"The Armour Fertilizer Works
Owned and operated by
Armour & Company.
Prudential Building,
Atlanta, Ga.

Duplicate.
To be Mailed with Bill of
Lading to Customer.

No. 612
March 10", 1905.

32 We have this day shipped from Nashville, Tenn. storage
To Bramlitt Hdw Co.
Corinth, Miss.
Charge to S. D. Bramlitt. Address same.

No. Bags.	Weight of bags.	Brand.	Tons.
400	100	King Cotton 8.2.2	20

Order No. 4613.
Bill of lading herewith. Invoice will be mailed from Chicago.
Above quantities shipped 3 10 1905. Freight Terms.....
Car No. 13619. Via L. & N.
Charges prepaid $48.00.
THE ARMOUR FERTILIZER WORKS,
Per ALEX. LESLIE."

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Austin B. Carpenter, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Assistant Secretary of the said Colonial Development Company, unlawfully did sign his name, to wit, "A. B. Carpenter, Asst. Secy." on the face of a certain stock certificate, to wit, certificate No 28, showing the ownership by one Thomas M. Green of fifty-one shares of the capital stock of the said Colonial Development Company; he the said Austin B. Carpenter, at the time and
33 place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his said act to be done in pursuance and to effect the object of the said conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles H. MacDowell, on the twelfth day of January, in the year nineteen hundred and five, and during the period of time aforesaid, at and within the city of Chicago, in the State of Illinois, unlawfully did sign his name, to-wit, "C. H. MacDowell," under the name of the Armour Fertilizer Works, and after the word "by" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Armour and Company, under the trade name of "Armour Fertilizer Works," offered to furnish and deliver at Corinth, in the State of Mississippi to one S. D. Bramlitt, twenty tons of the fertilizer merchandise aforesaid; he the said Charles H. MacDowell, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of gaging in the same, the said Alabama Chemical Company, on the the first day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the city of Wilmington, in the State of North Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of six hundred and twenty

dollars for sixty-two shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Alabama Chemical Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Montgomery, in the State of Alabama, unlawfully did knowingly deliver its certain check drawn upon the Merchants and Planters-Farley National Bank, Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of William DeC. Kessler, as payment for forty-two shares of the capital stock of the said Colonial Development Company, Limited;

34 And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Anderson Phosphate and Oil Company, on the twenty-ninth day of August, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Anderson, in the State of South Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of five hundred and eighty dollars for fifty-eight shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly buy from the Carolina Savings Bank, Charleston, South Carolina, a draft upon the Citizens National Bank, of New York City, for the payment of the sum of seven thousand nine hundred and forty-nine dollars and forty-three cents to the order of one Frank E. Taylor, Vice-President and General Manager of the said Ashepoo Fertilizer Company;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and *and* during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly cause the said Frank E. Taylor to endorse the check last above mentioned payable to the order of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Blackshear Manufacturing Company, on the seventeenth day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Blackshear, in the State of Georgia, unlawfully did knowingly deliver to the Atlantic Coast Line Railroad Company six tons of the fertilizer merchandise aforesaid, consigned and to be shipped

to the firm of E. J. Blume & Company, at Live Oak, in the State of Florida;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Etiwan Fertilizer Company, on the fourteenth day of December, in the year nineteen hundred and
35 three, and during the period of time aforesaid, at and within the town of Cairo, in the State of Georgia, by and through one P. H. Seabrook, its agent, unlawfully did knowingly offer and agree to furnish and deliver to the firm of Wight Brothers, of Cairo aforesaid, thirty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank Burbidge, on the first day of July, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Charleston, in the State of South Carolina, having then and there in his hands a certain check, dated the thirtieth day of June, in the same year nineteen hundred and four, drawn by the said Alabama Chemical Company upon the Continental National Bank of Chicago, for the payment of eleven hundred and forty-two dollars and ninety-seven cents to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Pay to order of People's National Bank, Colonial Development Co., Ltd., F. Burbidge, Pres."; he the said Frank Burbidge then and there, to wit, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William J. McCormack, on the ninth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, having then and there in his hands a certain check dated the fifth day of September, in the same year, drawn by the said New Orleans Acid & Fertilizer Company, upon the Louisiana National Bank of New Orleans, for the payment of seven hundred and fifty dollars to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Colonial Developm't Co., Frank Burbidge, Sec. & Treas., per Wm. J. McCormack"; he the said William J. McCormack, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of en-

gaging in the same, the said Federal Chemical Company, of
36 Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the said State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, and during the period of time aforesaid, at Springfield afore-
37 said, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff & Williams, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Goulding Fertilizer Company, Limited, on the twenty-fifth day of November, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the

town of Cullman, in the State of Alabama, by and through one W. E. Craig, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one John Sutterer, at Cullman aforesaid, three hundred and seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the sixth day of September, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Pensacola, in the State of Florida, having then and there in his hands a certain check, dated the fifth day of September, in the same year nineteen hundred and three, drawn by the said Alabama Chemical Company upon Merchandise Merchants and Planters-Farley National Bank of Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of W. DeC. Kessler, unlawfully did sign his name, to wit, "W. DeC. Kessler," upon the back of the said check next below the written words "Pay to the order of Colonial Development Co."; he the said William DeC. Kessler then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the back of the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the said fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Vice-President of the said Colonial Development Company, unlawfully did sign his name, to wit, "W. DeC. Kessler, V. P." on the face of the said stock certificate in the name of Thomas M. Green; he the said William DeC. Kessler, at the time and place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his act to be done in pursuance and to effect the object of
38 the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Gulfport Cotton Oil Fertilizer and Manufacturing Company, on the twenty-seventh day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-four hundred dollars for and in respect of twelve thousand tons of the fertilizer merchandise aforesaid, allotted to the said Gulfport Cotton Oil, Fertilizer and Manufacturing Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Home Mixture Guano Company, on a day in the year nineteen hundred and three to the said grand jurors

unknown, and during the period of time aforesaid, at and within the City of Columbus, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Jackson Fertilizer Company, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Jackson, in the State of Mississippi, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Marietta Fertilizer Company, on the twenty-first day of July, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by and through one L. W. Reeves, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one James A. Boyd, at Jonesboro aforesaid, seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said James G. Tinsley, on the
39 third day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Nashville, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley; he the said James G. Tinsley, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Meridian Fertilizer Factory, on the seventh day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Cullman, in the State of Alabama, by its agent E. L. Robbins, unlawfully did knowingly offer to furnish to C. A. Steifelmeyer one hundred and fifty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said National Fertilizer Company, on the

second day of March, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eight/y dollars to the order of F. Burbidge; he the said William D. Rhea, then
40 and there, to wit, at the time and place when and where he so directed and required the said E. W. Connell to sign his name as aforesaid to the said check, well knowing the nature and contents of the said check, and that his said direction and requirement were in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid; he the said William D. Rhea then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the said document, well knowing the character of the same, and well knowing his said act to be one done in pursuance of and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said New Orleans Acid & Fertilizer Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did

knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars for seventy-five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Old Dominion Guano Company, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-six hundred and twenty dollars, for and
41 in respect of thirteen thousand one hundred tons of the fertilizer merchandise aforesaid, allotted to the said Old Dominion Guano Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William L. Peel, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did sign his name, to wit, "W. L. Peel, Prest.," to a certain check, to wit, a check drawn by the Maddox-Rucker Banking Company upon the National Park Bank, New York, for the payment of twenty-six hundred and twenty dollars to the order of the said Colonial Development Company, Limited; he the said William L. Peel, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Planters Chemical Company, on the thirtieth day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Talladega, in the State of Alabama, unlawfully did knowingly pay the said Colonial Development Company, Limited, the sum of fifty dollars for five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Read Phosphate Company, on the fifth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Hartselle, in the State of Alabama, unlawfully did knowingly offer to sell and deliver to one S. E. Stewart, at that place, forty to fifty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and

three, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too
42 voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid; he the said Abram C. Read, then and there, to wit, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved, Nashville Tenn. Dec. 6 1904," and above the word "Manager," upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof, offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid; he the said Abram C. Read then and there, to wit, at the time and place when and where he so as aforesaid signed his name to the last mentioned document, well knowing the character and contents of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said F. S. Royster Guano Company, on the thirtieth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine thousand three hundred and fourteen dollars and seventy-four cents, on account of such merchandise sold and delivered by the said F. S. Royster Guano Company in excess of its allotment under the aforesaid unlawful conspiracy;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles F. Burroughs, on the twenty-fifth day of March, in the year nineteen hundred and four,
43 and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did sign

his name, to wit, "C. F. Burroughs," under the word "countersigned" and above the words "Vice-President" upon the face of a certain document, partly written and partly printed, too voluminous to be here set forth in full, wherein and whereby the said F. S. Royster Guano Company and he the said Charles F. Burroughs, as Vice-President thereof, offered to sell to one J. W. Carter, and to deliver to him at Maxton, in the State of North Carolina, ten tons of the fertilizer merchandise aforesaid; he the said Charles F. Burroughs, at the time and place when and where he so as aforesaid signed his name to the said document, well knowing the character and contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Savannah Guano Company, on the second day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did knowingly pay to the said Frank Burbidge the sum of nine hundred and forty dollars for ninety-four shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said A. J. Ives, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did sign his name, to wit, "A. J. Ives, Secty. & Treas." to a certain check, to wit, a check drawn by the Savannah Guano Company upon the Merchants National Bank, Savannah, Georgia, for the payment of three thousand one hundred and forty dollars to the order of New York Exchange; he the said A. J. Ives, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Southern States Phosphate and Fertilizer Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of the time afore-
44 said, at and within the City of Augusta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine hundred and sixty dollars for ninety-six shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Chemical and Oil Company, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the

town of Troy, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand dollars for and in respect of one-half of forty thousand tons of the fertilizer merchandise aforesaid allotted to the said Standard Chemical and Oil Company, as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Guano and Chemical Manufacturing Company, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand seven hundred and seventy-four dollars and seventy-seven cents as a partial payment for and in respect of the fertilizer merchandise aforesaid, allotted to the said Standard Guano and Chemical Manufacturing Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Swift & Company, on the first day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by its agent, J. Z. Elliott, unlawfully did knowingly offer to furnish to one W. P. Diehl thirty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

And that, further in pursuance of the said unlawful con-
45 spiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes & Bro., at Oxford, Alabama, a certain letter of the tenor following, to wit:

T. G. Tinsley, Pres't & Treas. Allen Hardison, Sec'y.

Tennessee Chemical Company, Manufacturers and Importers of Ox Fertilizers.

NASHVILLE, TENN., *May* 17–'05.

Messrs. D. P. Haynes & Bro., Oxford, Ala.

DEAR SIRS: I am in receipt of your favor of the 16th and beg to state we could not allow any discount further than the 5 % for cash

settlement. We will be glad to have you settle in cash on this basis if you desire to do so, but are sorry to state we are not in a position to offer you any further discount.

Yours truly, T. G. TINSLEY, *President;*

he the said T. Garland Tinsley then and there, to wit, at the time and place when and where he so as aforesaid caused the said letter to be written and sent as aforesaid, well knowing that the same was so written and sent in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part in engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Company, James G. Tinsley. By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee

46 Chemical Company upon the Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley; he the said T. Garland Tinsley, at the same time and place when and where he so as aforesaid wrote the said endorsement on the back of the said check, well knowing the contents of the same, and that his said act was done in pursuance of and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Valley Fertilizer Company, on the second day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Florence, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars, as a partial payment for and in respect of fertilizer merchandise, aforesaid, allotted to the said Tennessee Valley Fertilizer Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on their parts respectively, of engaging in the same, the said Frank Burbidge, Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson, during the period of time aforesaid, at the City of New York, in the State of New York, the City of Washington, in the District of Columbia, Old Point Comfort and Hot Springs, in the State of Virginia, St. Augustine, in the State of Florida, and French Lick Springs, in the State of Indiana, unlawfully did as officers, directors and attorney of the said Colonial Development Company, Limited,

meet together for the purpose of discussing and attending to the affairs of the said Colonial Development Company, Limited; they the said Frank Burbidge, Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson when and where they so met together aforesaid, well knowing the purpose of such meetings, and well knowing their acts in the premises to be acts in pursuance and to effect the object of the said unlawful conspiracy, and that the same were done as acts on their parts respectively of engaging in the said unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, during the period of time aforesaid, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form aforesaid, unlawfully did engage in a conspiracy in
47 restraint of trade and commerce among the several States;
Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

SECOND COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the first count described, and were so engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord, nineteen hundred and three at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the grand jurors unknown, and engage in a conspiracy, among themselves and with such other unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid; which said unlawful conspiracy in this count mentioned then and there was a conspiracy for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described; that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the

said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing and causing to be fixed, uniform and non-competitive prices, by them to be styled "current, rea-
48 sonable market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such times prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum ther-of during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be the absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its excess

sales, in which case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of pay-
49 ment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their co-operation in carrying out the said unlawful conspiracy, the said defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, and as being acts on the part of the said corporation and individual defendants respectively of engaging in that conspiracy, are now here in this count charged to be acts by the same corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned, and to have been acts on the part of the said corporation and individual defendants respectively of engaging in the last-named unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a con-
50 spiracy in restraint of trade and commerce among the several States; against the peace and dignity of the said United

States, and contrary to the form of the statute of the same in such case made and provided.

THIRD COUNT.

And the grand jurors, aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the said first count described, and so were engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the said United States, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the said United States, to wit, the offense of engaging in a combination, among themselves and with such other unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid, which said unlawful conspiracy in this count mentioned then and there was a conspiracy to engage in a combination for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described, that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and com-
51 merce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them to be styled "current, reasonable market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be

prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such times prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful combination and ninety per centum thereof during the second year; it being a further element of the said unlawful combination in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on the said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the
52 same on account of its excess sales, in which case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their cooperation in carrying out the said unlawful combination, the said defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and

the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful combination; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, are now here in this count charged to be acts by the said corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy to commit an offense against the said United States: Against
53 the peace and dignity of the said United States; Against the peace and dignity of the said United States, and contrary to the form of the statute in such case made and provided.

FOURTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names

and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State, but by way of and partly through another State, and were severally engaged both in local com-
54 merce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the aforesaid business and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section one of the said Act of Congress, approved July 2, 1890, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, The Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company of Delaware, the Federal Chemical

Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count,
55 to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly engage in a conspiracy in restraint of commerce among the several States, to wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, whereby the said commerce was restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise which were maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the period of such unlawful conspiracy, and greatly in excess of those prices which would have otherwise prevailed in the said States during the period of such unlawful conspiracy, and were therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby earnest money was given to secure the maintenance of such prices and compensation was made to those losing volume of business by reason of maintaining such prices, that is to say:

There was from time to time allotted to each of said corporation defendants and firms an amount of tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms paid into a common fund the sum

of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sums becoming due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which faithfully maintained such uniform and non-competitive prices and failed to make sales
56 and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but sold and delivered through itself and its subsidiary companies a minimum amount thereof required as a guarantee of good faith, received from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid fell short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies made such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, as a penalty upon such excess sales, paid into such common fund like amounts per ton on the said respective kinds of fertilizers, divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means whereby said unlawful conspiracy was effected, a corporation of Ontario, Canada, whose stock was apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was the common fund aforesaid into which was paid the earnest money and penalties on excess sales aforesaid, and from which was paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which the same was operated and directed.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that within the period aforesaid of said unlawful conspiracy in this count of this indictment mentioned, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and did do and perform such acts as acts on their respective parts of engaging in the said unlawful conspiracy in this count of this indictment mentioned, and that each of such defendants at the time and place when and where such defendants did and performed the acts hereinafter so set forth in connection with such defendant respectively, then

and there well knew the character of such act and that such
57 act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, and as an act on the part of such defendant in engaging in the same, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year, nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the
58 tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee,
59 unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the

County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit,
60 "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Ten-

nessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec. 6 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abraham C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P.
61 Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said corporation and individual defendants, during the period of time aforesaid, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

Fifth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the

first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and
62 through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the several States of the conspiracy and the said States of Virginia, Illinois and Kentucy, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commence against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, approved July 2, 1890, the said corporation defendants named in the said first count, to wit, the Virginia-Caro-
63 lina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, and engage in a conspiracy among themselves and with such other unknown corporations and persons, in restraint of commerce among the several States, to-wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, by which unlawful conspiracy said commerce was to be restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the

various points of delivery in the said States of the conspiracy,
64 which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy, and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices, that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to make sales and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose
65 treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary and

common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful conspiracy was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that such act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the ewenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

66 In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one

Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said consiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company,
67 on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Ten-

nessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle
68 District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his, the said E. W. Connell's name as such Treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fer-

tilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read,"
after the words "Approved—Nashville, Tenn., Dec. 6 1904"
69 and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he, the said Abram C. Read as Manager thereof offer-d to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee

Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

70 SIXTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were

severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress approved July 2, 1890, and entitled "An Act to protect
71 trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and in the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section 5440 of the Revised Statutes of the United States, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants, named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William
72 J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Wil-

liam D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the United States, to wit, to engage in a combination in restraint of commerce among the several States, namely, a combination in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, and did then and there so conspire to commit the aforesaid offense by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy, and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices; that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to
73 make sales and deliveries of such merchandise through itself and its subsidiary — amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment,

as aforesaid; and on the other hand, each of said corporation defendants and firms which, through itself and its subsidiary companies, should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful combination was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid, the corporation defendants and individual defendants, hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that such act was done in pur-
74 suance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and

four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at West
75 Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid,

consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchan-
76 dise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Arndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day

and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D.
77 Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec. 6 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes

and Bro.," at Oxford, Alabama, that certain letter of the date
78 set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley, By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did conspire to commit an offense against the United States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

ABRAM M. TILLMAN,
United States Attorney.

(Endorsed as follows:) No. 963. United States Circuit Court, Middle District of Tennessee. *The United States vs. Virginia-Carolina Chemical Company et als.*

Indictment for violating Act of Congress approved July 2, 1890, and entitled "An Act to Protect Trade and Commerce against unlawful restraints and monopolies," and Section 5440 R. S. U. S.

A True Bill. Robert Q. Stewart, Foreman of the Grand Jury.

Names of Witnesses Sworn and Examined Before the Grand Jury.

J. C. Adams, Henry E. Ahern, Lee Ashcraft, Eugene Atkinson, N. E. Barker, W. F. Barrett, James C. Beck, J. M. Berry, W. W. Bird, L. W. Botts, Clarence Braden, S. D. Bramlitt, A. P. Brantley,
B. D. Brantley, Dewitt Brown, H. C. Brown, Arthur Bussey,
79 Hezekiah Bussey, E. J. Blume, James A. Boyd, William F. Burns, Oscar Bright, J. W. Carter, B. G. Clark, C. W. Comes, E. W. Connell, Charles Earle Currie, R. L. Davis, Joseph Denee, W. P. Diehl, A. M. Dobbs, John V. Dobson, C. H. Drayton, W. L. Dumas, J. B. Duncan, S. Eastland, T. B. Edwards, Culpepper Exum, H. C. Fischer, J. B. Fiser, Albert French, C. A. Gambrill, A. H. George, John E. Gibbs, William Gilchrist, James M. Goldsmith, A. A. Green, E. P. Grice, W. A. Hansel, G. A. Harrington, H. J. Harby, Allen Hardison, L. C. Hayne, J. L. Haynes, D. P. Haynes, R. W. Henderson, P. W. Hendricks, E. R. Hodgson, junior, E. R. Hodgson, senior, J. L. Horn, W. E. Hudson, T. J. Hunt, R. H. John-

ston, T. V. Kessler, E. M. Kirk, Henry Kirn, H. L. Law, Alexander Leslie, J. A. Lindsey, W. Hampton Logan, Harry Luck, John A. Lewis, W. F. McKenzie, Robert F. Maddox, H. W. Malloy, E. R. Manning, H. L. Milligan, J. Allen Moore, M. B. Neece, W. J. Oliver, E. Thomas Orgain, D. B. Osborne, Every M. Paget, W. W. Perkins, Dr. J. D. Plunkett, F. B. Pope, William Price, Charles Rainey, Frederick Rayfield, Isaac W. Read, W. A. Reynolds, I. T. Rhea, W. E. Richards, H. A. Rogers, V. N. Roadstrum, W. G. Sadler, G. W. Sanders, E. M. Sentelle, W. McR. Smith, R. G. Sparrow, J. F. Stackley, C. A. Steifelmeyer, S. E. Stewart, W. B. Stratford, John Sutterer, E. R. Taber, Frank E. Taylor, W. B. Taylor, W. D. Tharin, J. R. Timmerman, J. W. Todd, S. W. Travers, George H. Tucker, E. Van Winkle, J. T. Welch, O. C. Wiley, C. H. Willcox, T. B. Williams, Benjamin L. Willingham, W. S. Wight, E. G. Woodling.

Filed 11:30 A. M., May 25, 1906. H. M. Doak, Clerk, by E. L. Doak, Deputy Clerk. Abram M. Tillman, U. S. Atty.

I, H. M. Doak, Clerk of the Circuit Court of the United States in and for the Middle District of Tennessee, hereby certify that the foregoing is a true, perfect, and complete copy of an indictment filed as thereupon endorsed, etc. In witness whereof I have hereunto signed my name and affixed the seal of said court, at my office, this the 26th day of May, 1906.

[SEAL OF COURT.] H. M. DOAK, *Clerk.*

80 *Order Awarding Writs of Habeas Corpus and Certiorari.*

Filed July 14th, 1906.

In the Matter of the Petition of J. RICE SMITH for Writs of *Habeas Corpus* and Certiorari.

J. RICE SMITH, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

Let the writ of *habeas corpus*, in due form of law, as prayed for in the within petition be issued directed to Morgan Treat, United States Marshal for the Eastern District of Virginia, commanding him forthwith to make return of said writ and to produce the body of said petitioner, J. Rice Smith, before this Court, to be dealt with according to law; and that the writ of certiorari as prayed for in said petition be issued and made returnable forthwith.

Richmond, Va., July 14th, 1906.

NATHAN GOFF,
Presiding Circuit Judge, April Term, 1906.

Writ of Habeas Corpus.

81 UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

To Morgan Treat, United States Marshal for the Eastern District of Virginia, or any of his deputies:

We command you that the body of J. Rice Smith in your custody detained, as it is said, together with the day and cause of his caption and detention, you safely have before our Circuit Court of the United States, within and for the District aforesaid, forthwith, to do and receive all and singular those things which the said Circuit Court of the United States, within and for the District aforesaid, shall then and there consider of him in this behalf; and have you then and there this writ.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond, this 14th day of July, in the year of our Lord one thousand nine hundred and six, and of our Independence the 131st year.

[Seal United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Cerk of the Circuit Court of the United States for the Eastern District of Virginia.

Marshal's Return.

To the Circuit Court of the United States for the Eastern District of Virginia:

Morgan Treat, United States Marshal for the said Eastern District of Virginia, to whom the annexed writ is directed, has now before the court the body of J. Rice Smith therein named, as thereby commanded. And I certify that the cause of the detention of the said J. Rice Smith is a warrant directed to me and issued by the Honorable Edmund Waddill, Jr., Judge, of the said Eastern
82 District of Virginia, on July 14, 1906, under the provisions of section 1014 of the Revised Statutes of the United States, commanding the imprisonment and removal of the said J. Rice Smith to the Middle District of Tennessee for trial in the Circuit Court of the United States for said last mentioned district upon a certain indictment found in said last mentioned court against him, the said J. Rice Smith and others, a copy of which warrant of removal is set out in the petition of the said J. Rice Smith herein; and that a full, true and correct statement of all the proceedings before the said Judge upon the application for the arrest and commitment of the said J. Rice Smith and his removal to said Middle District of Tennessee for trial is contained and set forth in the statement or order of said Judge, a copy of which is set forth in section 7 of the said J. Rice Smith'- petition and in the documents made a part thereof and therein referred to.

Dated this 14th day of July, A. D. 1906.

MORGAN TREAT,
U. S. Marshal for the Eastern District of Virginia.

Writ of Certiorari.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

The President of the United States of America to the Judge of the District Court of the United States for the Eastern District of Virginia:

83 We being informed that there is now pending before you a suit in which the United States of America is plaintiff and J. Rice Smith is defendant; and we being willing, for certain reasons, that the said case and the record and proceedings therein should be certified by the Judge of the District Court of the United States for the Eastern District of Virginia and removed into the Circuit Court of the United States for the Eastern District of Virginia, sitting at Richmond, Virginia;

We do hereby command you forthwith that you send forthwith to the said Circuit Court of the United States for the Eastern District of Virginia, as aforesaid, the record and proceedings in said case, so that the said Circuit Court of the United States for the Eastern District of Virginia may act thereon as of right and according to law ought to be done.

Witness, The Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond, this 14th day of July, in the year of our Lord one thousand nine hundred and six, and of our Independence the 131st year.

[Seal United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Return of United States District Judge.

The Clerk of the United States District Court is hereby directed to deliver to the Judges of the United States Circuit Court within and for the Eastern District of Virginia the record and proceedings mentioned in the within writ.

Richmond, Va., July 14", 1906.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

84 *Transcript of Proceedings Before Honorable Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia.*

The following proceedings were had before Honorable Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia, at Richmond, Virginia, on the 14th day of July, 1906.

THE UNITED STATES
versus
J. RICE SMITH.

Writ of Certiorari.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

The President of the United States of America to the Judge of the District Court of the United States for the Eastern District of Virginia:

We being informed that there is now pending before you a suit in which the United States of America is plaintiff and J. Rice Smith is defendant; and we being willing, for certain rea-
85 sons, that the said case and the record and proceedings therein should be certified by the Judge of the District Court of the United States for the Eastern District of Virginia and removed into the Circuit Court of the United States for the Eastern District of Virginia, sitting at Richmond, Virginia.

We do hereby command you forthwith that you send forthwith to the said Circuit Court of the United States for the Eastern District of Virginia, as aforesaid, the record and proceedings in said case, so that the said Circuit Court of the United States for the Eastern District of Virginia may act thereon as of right and according to law ought to be done.

Witness, The Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond, this 14th day of July, in the year of our Lord one thousand nine hundred and six, and of our Independence the 131st year.

[Seal of United States Circuit Court.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Return of United States District Judge.

The Clerk of the United States District Court is hereby directed to deliver to the Judges of the United States Circuit Court within and for the Eastern District of Virginia the record and proceedings mentioned in the within writ.

Richmond, Va., July 14", 1906.

EDMUND WADDILL, JR.,
U. S. District Judge.

86 *Complaint.*

Filed July 14, 1906.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

On this 14th day of July, A. D. 1906, at the City of Richmond, in the said District, before the Hon. Edmund Waddill, Jr., Judge

of the District Court of the United States of America for the said District, comes Morgan Treat, United States Marshal in and for the said District, and upon his oath complains and says: that he has good cause to believe and does firmly believe that J. Rice Smith, of Richmond, Virginia, stands indicted by the Grand Jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said J. Rice Smith on the eighth day of July in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, being during said period Agent and manager of the Virginia-Carolina Chemical Company, a corporation existing, under and by the laws of the State of New Jersey, did in the said Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said J. Rice Smith did unlawfully conspire with divers other persons and cor-
87 porations to commit an offense against the United States, to-wit, the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States, all as more fully set out in an indictment filed in the said Circuit Court of the United States in and for the Middle District of Tennessee on May 25, 1906, in cause No. 963, entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," a certified copy of which indictment is hereto attached and made a part of this complaint; and complainant therefore charges that the said J. Rice Smith did commit the said offenses against the United States in manner and form as set forth in said indictment.

Complainant furthermore avers upon information and belief that in pursuance of an order of said Circuit Court of the United States for the Middle District of Tennessee a bench warrant has been issued from said Court for the arrest of said J. Rice Smith and delivered to the Marshal of said Court, who after due search has returned said warrant "not found" in said Middle District of Tennessee; and that said J. Rice Smith is now believed to be within the Eastern District of Virginia, of which District he is a resident.

Wherefore this complainant prays that the said J. Rice Smith may be arrested and imprisoned and removed or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee, and further dealt with according to law.

MORGAN TREAT, *Marshal.*

Subscribed and sworn to before me by the above named Morgan Treat the day and year first above written.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

89 Certified Copy of Indictment

In the Circuit Court of the United States of America for the Middle District of Tennessee, of the April Term, in the Year of Our Lord Nineteen Hundred and Six.

MIDDLE DISTRICT OF TENNESSEE, *sct:*

The grand jurors for the United States of America, inquiring for the Middle District of Tennessee, upon their oath present, that before and on the eighth day of July, in the year of our Lord nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year of our Lord nineteen hundred and five, the following named corporations, respectively organized and existing under and authorized by the laws of the several States and of the foreign country here named in connection with them, and hereafter in this indictment called corporation defendants, to wit, the Virginia-Carolina Chemical Company, of New Jersey, Armour and Company, of Illinois, the Acme Manufacturing Company, of North Carolina, the Alabama Chemical Company, of New Jersey, the Anderson Phosphate & Oil Company, of South Carolina, the Ashepoo Fertilizer Company, of South Carolina, the Blackshear Manufacturing Company, of Georgia, the Etiwan Fertilizer Company, of South Carolina, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, The Furman Farm Improvement Company, of Georgia, the Goulding Fertilizer Company, Limited, of Great Britain and Ireland, The Goulding Fertilizer Company, of Florida, the Gulfport Cotton Oil, Fertilizer & Manufacturing Company, of Georgia, the Home Mixture Guano Company, of Georgia, the Jackson Fertilizer Company, of Mississippi, the Marietta Fertilizer Company, of Georgia, the Meridian Fertilizer Factory, of Mississippi, the National Fertilizer Company, of Tennessee, the New Orleans Acid and Fertilizer Company, of New Jersey, the Old Dominion Guano Company, of Georgia, the Planters Chemical Company, of Alabama, the Read Phosphate Company, of West Virginia, the F. S. Royster Guano Company, of Virginia, the Savannah Guano Company, of Georgia, the Southern States Phosphate and Fertilizer Company, of Georgia, the Standard Chemical & Oil Company, of Alabama, the Standard Guano and Chemical Manufacturing Company, of Louisiana, Swift & Company, of Illinois, the Tennessee Chemical Company, of Tennessee, and the Tennessee Valley Fertilizer Company, of Alabama, and certain firms, to wit, the firm of A. D. Adair and McCarty Brothers and the firm of Wilcox, Ives & Company, did carry on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereafter in this indictment called the States of the conspiracy, as wholesale dealers in complete and alkaline fertilizers and in acid phosphates, nitrates, and potash salts suitable for fertilizers, which then were useful and valuable articles of merchandise, indispensable for use on the soil of the said States of the conspiracy in order that the staple

crops of those States might be raised therefrom; that the following named persons hereafter in this indictment called individual defendants, to wit, Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, of the said Virginia-Carolina Chemical Company, and J. Rice Smith, agent and manager of the said Virginia-Carolina Chemical Company, and president of the Georgia Chemical Works hereinafter mentioned, Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, Fred G. Brown, president and treasurer of the said Anderson Phosphate & Oil Company, Frank Burbidge, president, and William J. McCormack, treasurer of the said Etiwan Fertilizer Company, George Braden, president of the said Federal Chemical Company, of Delaware, and also of the said Federal Chemical Company, of Kentucky, Augustus D. Adair and James D. McCarty, officers and agents of the said Furman Farm Improvement Company and members of the said firm of A. D. Adair and McCarty Brothers, William DeC. Kessler, secretary and treasurer of the said Goulding Fertilizer Company, Limited, James G. Tinsley, president of the said Marietta Fertilizer Company and vice-president of the said Tennessee Chemical Company, William D. Rhea, general manager of the said National Fertilizer Company, William L. Peel, president of the said Old Dominion Guano Company, Abram C. Read, vice-president and general manager, and Isaac Mayo Read, agent, of the said Read Phosphate Company, Frank S. Royster, president, and Charles F. Burroughs, vice-
90 president, of the said F. S. Royster Guano Company, A. J. Ives, whose Christian name is to the said grand jurors unknown, secretary and treasurer of the said Savannah Guano Company and a member of the said firm of Wilcox, Ives & Company, T. Porter Fleming, vice-president of the said Southern States Phosphate and Fertilizer Company, and T. Garland Tinsley, president and treasurer of the said Tennessee Chemical Company, in their said several capacities as officers, managers, agents, and attorneys of the said corporation defendants and members of the said firms, and on behalf of those corporations and firms, during the period of time in this indictment first aforesaid, did carry on the business aforesaid; that in so carrying on the said business the said defendants, that is to say, the said corporation and individual defendants, did sell and deliver large quantities of the said merchandise within the limits of the said States of the conspiracy from the respective places of business of the said corporation defendants and the said firms, located at different points within those States, to retail dealers in and consumers of such merchandise, in such States respectively, and did also ship large quan-ties of the same from their respective places of business, located in the said States of the conspiracy and also in the States of Virginia, Illinois, and Kentucky, into and through other of the said States than those in which their said places of business were located; that in so carrying on the said business and shipping the said merchandise from one of the said States into and through another or others thereof, the said defendants, during the period

aforesaid, were engaged in trade and commerce among the States of this Union within the meaning of the Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in so carrying on the said business, trade and commerce, the said Virginia-Carolina Chemical Company and the said Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, and J. Rice Smith, agent and manager, of the said Virginia-Carolina Chemical Company, did make use of and operate a portion of their said business, trade and commerce through each of certain other corporations, to wit, the American Fertilizing Company, of Virginia, the Birmingham Fertilizer Company, of Alabama, the Coweta Fertilizer Company of Georgia, the Georgia Chemical Works, of Georgia, the Navasa Guano Company, of North Carolina, of either the whole or a majority of the capital stock of which said corporations respect-
91 ively the said Virginia-Carolina Chemical Company was the owner; that in so carrying on the said business, trade and commerce, the said Armour and Company and the said Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, did make use of and operate all of their said business, trade and commerce through a certain other corporation called the Tuscarora Fertilizer Company, of New Jersey, and a certain trade name, to wit, the trade name of Armour Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Furman Farm Improvement Company and the said firm of A. D. Adair and McCarty Brothers did make use of and operate a portion of their said business trade, and commerce under the trade name of Chickamauga Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Federal Chemical Company, of Delaware, and the said Federal Chemical Company of Kentucky, did make use of, and operate a portion of their said business, trade and commerce through, the names of Century Phosphate Company, Fox Chemical Company, Branch, Globe Fertilizer Company, Branch, and Tennessee Phosphate Company; that in so carrying on the said business, trade and commerce, the said National Fertilizer Company did make use of, and operate a portion of its said business, trade and commerce through, the corporate name of American Guano Company and the trade name of Nashville Guano Company; that in so carrying on the said business, trade and commerce, the said Read Phosphate Company did make use of, and operate a portion of its said business, trade and commerce through the corporate name of Empire Guano Company; that in so carrying on the said business, trade and commerce, the said F. S. Royster Guano Company did make use of, and operate a portion of its said business, trade and commerce through the trade name of Atlantic Chemical Company and the corporate name of Columbia Guano Company; that in so carrying on the said business, trade and commerce, the said Swift and Company did make

use of, and operate the whole of its said business, trade and commerce through, the trade name of Swift Fertilizer Works; and that in so carrying on the said business, trade and commerce, the said Tennessee Chemical Company did make use of, and operate a portion of its said business, trade and commerce through, the trade name of Continental Fertilizer Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that of the total volume of such business, trade and commerce then so being carried on by the said defendants and their competitors, the said defendants together had and controlled
92 the principal part, that is to say, ninety per centum thereof; and that because the said corporation defendants and the said firms were in fact separate and distinct from each other, they should have conducted their interstate trade and commerce strictly in competition with each other, during the said period, and then would have so conducted the same but for the unlawful conspiracy in restraint of the said business, trade and commerce in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, at and within the said Middle District of Tennessee, in violation of the provisions of said section one of the said Act of Congress, unlawfully did knowingly engage in a conspiracy in restraint of the said business, trade and commerce, so then being carried on by them in the manner aforesaid, whereby the said business, trade and commerce was restrained in the several ways and by the several means now here set forth and described, that is to say:

Competition as to the prices at which the said merchandise was sold and delivered by the said corporation defendants and the said firms in the said States of the conspiracy, which before the period of time in this indictment first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was prevented and destroyed by the said defendant from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them styled "current, reasonable market prices," for the said merchandise so sold and delivered by the said corporation defendants and the said firms in those States, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so fixed and caused to be fixed; which said uniform and non-competitive prices were prices greatly in excess of the prices which but for the said unlawful conspiracy would at such times have prevailed for the said merchandise in the said business, trade and commerce, and were prices therefore unreasonable, and were a tax on the people of the said States of the said conspiracy amounting to a large sum of money, to wit, four million dollars, annually during the continuance of the same.

For and on account of such quantity of the said merchandise as was sold and delivered as aforesaid by any of such corporation de-

fendants or of such firms, in excess of amounts allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and de-
93 livered in excess, was, by the corporation defendants and firms so selling and delivering the same, paid into a common fund held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, compensated, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as sold and delivered less than the amounts so allotted to them respectively, so it was not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy that each of the said corporation defendants and of the said firms also paid into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be the absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm, in disposing of its said allotment in carrying on the said business, trade and commerce, on its part faithfully should exercise every reasonable effort and due business diligence to maintain the prices so fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its said excess sales, in which case an equal amount was returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also made uniform and non-competitive as between all of the said corporation defendants and the said firms, in the said business, trade and commerce, among the said States of the conspiracy.

As a convenient intermediary and common agent between the said corporation defendants and the said firms, respectively and as a means of securing their co-operation in carrying out the said unlawful conspiracy, the said defendants made use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company, Limited, was also allowed and required to collect, hold, use and distribute the said fund aris-
94 ing from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of September, in the year nineteen hundred and three, during the period of time aforesaid, at and within the City of New York, in the State of New York, unlawfully did knowingly, deposit with the Continental Trust Company, of the said City of New York, the sum of twenty-six thousand dollars, in connection with the purchase of by the said trust company on behalf of the said Virginia-Carolina Chemical Company, and in the name of one Montrose Stuart, a clerk in the office of the said trust company, of twenty-six hundred shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Samuel T. Morgan, on the seventh day of October, in the same year nineteen hundred and three, and during the period of time aforesaid, at and within the said city of New York, in the State of New York, unlawfully did deliver to the said William DeC. Kessler, Vice-President of the said Colonial Development Company, Limited, three checks drawn by the said Virginia-Carolina Chemical Company, one upon the National City Bank, of New York City aforesaid, for eighty thousand dollars, another on the Bank of America, of New York City aforesaid, for fifty thousand dollars, and the other on the National Park Bank, of New York City aforesaid, for thirty-five thousand and four hundred and sixty-eight dollars, aggregating one hundred and sixty-five thousand and four hundred and sixty-eight dollars, as and for a payment, by the said Virginia-Carolina Chemical Company, to the said Colonial Development Company, Limited, of twenty cents a ton on its allotment under the said unlawful conspiracy; he the said Samuel T. Morgan, when and where he so as aforesaid delivered the said checks to the said William DeC. Kessler, well knowing the character and purpose of the same, and well knowing that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as acts on their parts respectively of engaging in the same, the said Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox,
95 J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, on the seventeenth day of September, in the year nineteen hundred and three, and during the period aforesaid, at the said City of New York, in the said State of New York, unlawfully did meet together to discuss and further the object of the said unlawful conspiracy; they the said Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy,

Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, when and where they so as aforesaid met together, each well knowing the character and purpose of the said meeting, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank E. Wilcox, on the first day of November, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did deliver to one W. W. Perkins, Secretary of the said American Fertilizing Company, a certain document, too voluminous to be here set forth, stating certain prices and terms of sale, fixed in pursuance of the said unlawful conspiracy, for the said fertilizer merchandise, in the States of North Carolina, South Carolina, Georgia, Florida, Alabama and Tennessee, for the spring season of the year nineteen hundred and four; he the said Frank E. Wilcox at the time and place when and where he so as aforesaid delivered the said document to the said W. W. Perkins, well knowing the character of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, and during the period of time aforesaid, at the town of Decherd, in the said Middle District of Tennessee, by and through one
96 F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, and during the period aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to

furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, and during the period of time aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at the City of Nashville, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, a certain notice of shipment, partly written and partly printed, in the words and figures following, that is to say:

"The Armour Fertilizer Works
Owned and operated by
Armour & Company.

Duplicate.
To be Mailed with Bill of
Lading to Customer.

Prudential Building,
Atlanta, Ga.

No. 612
March 10", 1905.

97 We have this day shipped from Nashville, Tenn. storage
To Bramlitt Hdw Co.
Corinth, Miss.
Charge to S. D. Bramlitt. Address same.

No. Bags.	Weight of bags.	Brand	Tons.
400	100	King Cotton 8.2.2	20

Order No. 4613.
Bill of lading herewith. Invoice will be mailed from Chicago.
Above quantities shipped 3 10 1905. Freight Terms.....
Car No. 13619. Via L. & N.
Charges prepaid $48.00.

THE ARMOUR FERTILIZER WORKS,
Per ALEX. LESLIE."

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the

said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Austin B. Carpenter, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Assistant Secretary of the said Colonial Development Company, unlawfully did sign his name, to wit, "A. B. Carpenter, Ass't Sec'y" on the face of a certain stock certificate, to wit, certificate No. 28, showing the ownership by one Thomas M. Green of fifty-one shares of the capital stock of the said Colonial Development Company; he the said Austin B. Carpenter, at the time and
98 place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his said act to be done in pursuance and to effect the object of the said conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles H. MacDowell, on the twelfth day of January, in the year nineteen hundred and five, and during the period of time aforesaid, at and within the city of Chicago, in the State of Illinois, unlawfully did sign his name, to-wit, "C. H. MacDowell," under the name of the Armour Fertilizer Works, and after the word "by" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Armour and Company, under the trade name of "Armour Fertilizer Works," offered to furnish and deliver at Corinth, in the State of Mississippi to one S. D. Bramlitt, twenty tons of the fertilizer merchandise aforesaid; he the said Charles H. MacDowell, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Acme Manufacturing Company, on the first day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the city of Wil-

mington, in the State of North Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of six hundred and twenty dollars for sixty-two shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Alabama Chemical Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Montgomery, in the State of Alabama, unlawfully did knowingly deliver its certain check drawn upon the Merchants and Planters-Farley National Bank, Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of William DeC. Kessler, as payment for forty-two shares of the capital stock of the said Colonial Development Company, Limited;

99 And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Anderson Phosphate and Oil Company, on the twenty-ninth day of August, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Anderson, in the State of South Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of five hundred and eighty dollars for fifty-eight shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly buy from the Carolina Savings Bank, Charleston, South Carolina, a draft upon the Citizens National Bank, of New York City, for the payment of the sum of seven thousand nine hundred and forty-nine dollars and forty-three cents to the order of one Frank E. Taylor, Vice-President and General Manager of the said Ashepoo Fertilizer Company;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and *and* during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly cause the said Frank E. Taylor to endorse the check last above mentioned payable to the order of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Blackshear Manufacturing Company, on the seventeenth day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Blackshear, in the State of Georgia, unlawfully did know-

ingly deliver to the Atlantic Coast Line Railroad Company six tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of E. J. Blume & Company, at Live Oak, in the State of Florida;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Etiwan Fertilizer Company, on the fourteenth day of December, in the year nineteen hundred
100 and three, and during the period of time aforesaid, at and within the town of Cairo, in the State of Georgia, by and through one P. H. Seabrook, its agent, unlawfully did knowingly offer and agree to furnish and deliver to the firm of Wight Brothers, of Cairo aforesaid, thirty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank Burbidge, on the first day of July, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Charleston, in the State of South Carolina, having then and there in his hands a certain check, dated the thirtieth day of June, in the same year nineteen hundred and four, drawn by the said Alabama Chemical Company upon the Continental National Bank of Chicago, for the payment of eleven hundred and forty-two dollars and ninety-seven cents to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Pay to order of People's National Bank, Colonial Development Co., Ltd., F. Burbidge, Pres."; he the said Frank Burbidge then and there, to wit, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William J. McCormack, on the ninth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, having then and there in his hands a certain check dated the fifth day of September, in the same year, drawn by the said New Orleans Acid & Fertilizer Company, upon the Louisiana National Bank of New Orleans, for the payment of seven hundred and fifty dollars to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Colonial Developm't Co., Frank Burbidge, Sec. & Treas., per Wm. J. McCormack"; he the said William J. McCormack, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy,

and to effect the object of the same, and as an act on its part of engaging in the same, the said Federal Chemical Company, of
101 Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the said State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, and during the period of time aforesaid, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did
102 knowingly cause to be delivered, to the said firm of Fiser, Orndorff & Williams, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Goulding Fertilizer Company, Limited, on the twenty-fifth day of November, in the year nineteen

hundred and three, and during the period of time aforesaid, at and within the town of Cullman, in the State of Alabama, by and through one W. E. Craig, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one John Sutterer, at Cullman aforesaid, three hundred and seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the sixth day of September, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Pensacola, in the State of Florida, having then and there in his hands a certain check, dated the fifth day of September, in the same year nineteen hundred and three, drawn by the said Alabama Chemical Company upon Merchandise Merchants and Planters-Farley National Bank of Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of W. DeC. Kessler, unlawfully did sign his name, to wit, "W. DeC. Kessler," upon the back of the said check next below the written words "Pay to the order of Colonial Development Co."; he the said William DeC. Kessler then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the back of the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the said fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Vice-President of the said Colonial Development Company, unlawfully did sign his name, to wit, "W. DeC. Kessler, V. P." on the face of the said stock certificate in the name of Thomas M. Green; he the said William DeC. Kessler, at the time and place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his act to be done in pursuance and to effect the object
103 of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Gulfport Cotton Oil Fertilizer and Manufacturing Company, on the twenty-seventh day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-four hundred dollars for and in respect of twelve thousand tons of the fertilizer merchandise aforesaid, allotted to the said Gulfport Cotton Oil, Fertilizer and Manufacturing Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy,

and to effect the object of the same, and as an act on its part of engaging in the same, the said Home Mixture Guano Company, on a day in the year nineteen hundred and three to the said grand jurors unknown, and during the period of time aforesaid, at and within the City of Columbus, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Jackson Fertilizer Company, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Jackson, in the State of Mississippi, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Marietta Fertilizer Company, on the twenty-first day of July, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by and through one L. W. Reeves, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one James A. Boyd, at Jonesboro aforesaid, seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said James G. Tinsley, on the third
104 day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Nashville, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley; he the said James G. Tinsley, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Meridian Fertilizer Factory, on the seventh day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Cullman, in the State of Alabama, by its agent E. L. Robbins, un-

lawfully did knowingly offer to furnish to C. A. Steifelmeyer one hundred and fifty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge; he the said
105 William D. Rhea, then and there, to wit, at the time and place when and where he so directed and required the said E. W. Connell to sign his name as aforesaid to the said check, well knowing the nature and contents of the said check, and that his said direction and requirement were in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid; he the said William D. Rhea then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the said document, well knowing the character of the same, and well knowing his said act to be one done in pursuance of and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said New Orleans Acid & Fertilizer Company, on

the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars for seventy-five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Old Dominion Guano Company, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-six hundred and twenty dollars, for and in respect of
106 thirteen thousand one hundred tons of the fertilizer merchandise aforesaid, allotted to the said Old Dominion Guano Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William L. Peel, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did sign his name, to wit, "W. L. Peel, Prest.," to a certain check, to wit, a check drawn by the Maddox-Rucker Banking Company upon the National Park Bank, New York, for the payment of twenty-six hundred and twenty dollars to the order of the said Colonial Development Company, Limited; he the said William L. Peel, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Planters Chemical Company, on the thirtieth day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Talladega, in the State of Alabama, unlawfully did knowingly pay the said Colonial Development Company, Limited, the sum of fifty dollars for five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Read Phosphate Company, on the fifth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Hartselle, in the State of Alabama, unlawfully did knowingly offer to sell and deliver to one S. E. Stewart, at that place, forty to fifty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of en-

gaging in the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here
107 set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid; he the said Abram C. Read, then and there, to wit, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved, Nashville, Tenn. Dec. 6, 1904," and above the word "Manager," upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof, offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid; he the said Abram C Read then and there, to wit, at the time and place when and where he so as aforesaid signed his name to the last mentioned document, well knowing the character and contents of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said F. S. Royster Guano Company, on the thirtieth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine thousand three hundred and fourteen dollars and seventy-four cents, on account of such merchandise sold and delivered by the said F. S. Royster Guano Company in excess of its allotment under the aforesaid unlawful conspiracy;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles F. Burroughs, on the
108 twenty-fifth day of March, in the year nineteen hundred and four, and during the period of time aforesaid, at and within

the City of Norfolk, in the State of Virginia, unlawfully did sign his name, to wit, "C. F. Burroughs," under the word "countersigned" and above the words "Vice-President" upon the face of a certain document, partly written and partly printed, too voluminous to be here set forth in full, wherein and whereby the said F. S. Royster Guano Company and he the said Charles F. Burroughs, as Vice-President thereof, offered to sell to one J. W. Carter, and to deliver to him at Maxton, in the State of North Carolina, ten tons of the fertilizer merchandise aforesaid; he the said Charles F. Burroughs, at the time and place when and where he so as aforesaid signed his name to the said document, well knowing the character and contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Savannah Guano Company, on the second day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did knowingly pay to the said Frank Burbidge the sum of nine hundred and forty dollars for ninety-four shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said A. J. Ives, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did sign his name, to wit, "A. J. Ives, Secty. & Treas." to a certain check, to wit, a check drawn by the Savannah Guano Company upon the Merchants National Bank, Savannah, Georgia, for the payment of three thousand one hundred and forty dollars to the order of New York Exchange; he the said A. J. Ives, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further n pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Southern States Phosphate and Fertilizer Company, on the fifth day of September, in the year nineteen
109 hundred and three, and during the period of the time aforesaid, at and within the City of Augusta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine hundred and sixty dollars for ninety-six shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Chemical and Oil Company, on the third day of October, in the year nineteen hundred and three,

and during the period of time aforesaid, at and within the Town of Troy, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand dollars for and in respect of one-half of forty thousand tons of the fertilizer merchandise aforesaid allotted to the said Standard Chemical and Oil Company, as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Guano and Chemical Manufacturing Company, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand seven hundred and seventy-four dollars and seventy-seven cents as a partial payment for and in respect of the fertilizer merchandise aforesaid, allotted to the said Standard Guano and Chemical Manufacturing Company, as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Swift & Company, on the first day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by its agent, J. Z. Elliott, unlawfully did knowingly offer to furnish to one W. P. Diehl thirty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

And that, further in pursuance of the said unlawful con-
110 spiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes & Bro., at Oxford, Alabama, a certain letter of the tenor following, to wit:

T. G. Tinsley, Pres't & Treas. Allen Hardison, Sec'y.

Tennessee Chemical Company, Manufacturers and Importers of Ox Fertilizers.

NASHVILLE, TENNESSEE, *May* 17, '05.

Messrs. D. P. Haynes & Bro., Oxford, Ala.

DEAR SIRS:—I am in receipt of your favor of the 16th and beg to state we could not allow any discount further than the 5% for cash settlement. We will be glad to have you settle in cash on this basis if you desire to do so, but are sorry to state we are not in a position to offer you any further discount.

Yours truly, T. G. TINSLEY, *President;*

he the said T. Garland Tinsley then and there, to wit, at the time and place when and where he so as aforesaid caused the said letter to be written and sent as aforesaid, well knowing that the same was so written and sent in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part in engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Company, James G. Tinsley. By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon the Mercantile National Bank, New York, for the payment of
111 sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley; he the said T. Garland Tinsley, at the same time and place when and where he so as aforesaid wrote the said endorsement on the back of the said check, well knowing the contents of the same, and that his said act was done in pursuance of and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Valley Fertilizer Company, on the second day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Florence, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars, as a partial payment for and in respect of fertilizer merchandise aforesaid, allotted to the said Tennessee Valley Fertilizer Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on their parts respectively, of engaging in the same, the said Frank Burbidge,

Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson, during the period of time aforesaid, at the City of New York, in the State of New York, the City of Washington, in the District of Columbia, Old Point Comfort and Hot Springs, in the State of Virginia, St. Augustine, in the State of Florida, and French Lick Springs, in the State of Indiana, unlawfully did as officers, directors and attorney of the said Colonial Development Company, Limited, meet together for the purpose of discussing and attending to the affairs of the said Colonial Development Company, Limited; they the said Frank Burbidge, Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson when and where they so met together aforesaid, well knowing the purpose of such meetings, and well knowing their acts in the premises to be acts in pursuance and to effect the object of the said unlawful conspiracy, and that the same were done as acts on their parts respectively of engaging in the said unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, during the period of time aforesaid, and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form aforesaid, unlawfully did engage in a conspiracy in restraint of trade and commerce among the several States; Against the
112 peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

SECOND COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the first count described, and were so engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord, nineteen hundred and three at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the grand jurors unknown, and engage in a conspiracy, among themselves and with such other

unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid; which said unlawful conspiracy in this count mentioned then and there was a conspiracy for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described; that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing and causing to be fixed, uniform and non-competitive prices, by them to be styled "current, reason-
113 able market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such times prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum ther-of during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be the

absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on the said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its excess sales, in which case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of pay-
114 ment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their co-operation in carrying out the said unlawful conspiracy, the said defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, and as being acts on the part of the said corporation and individual defendants respectively of engaging in that conspiracy, are now here in this count charged to be acts by the same corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned, and to have been acts on the part of the said corporation and individual defendants respectively of engaging in the last-named unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the

said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of trade and commerce among the several States;
115 against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

THIRD COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the said first count described, and so were engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the said United States, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the said United States, to wit, the offense of engaging in a combination, among themselves and with such other unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid, which said unlawful conspiracy in this count mentioned then and there was a conspiracy to engage in a combination for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and com-
116 merce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them to be styled "current,

reasonable market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such time prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful combination and ninety per centum thereof during the second year; it being a further element of the said unlawful combination in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be — absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on the said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its excess sales, in which
117 case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their cooperation in carrying out the said unlawful combination, the said

defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful combination; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, are now here in this count charged to be acts by the said corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a con-
118 spiracy to commit an offense against the said United States; Against the peace and dignity of the said *said* United States; *Against the peace and dignity of the said United States*, and contrary to the form of the statute in such case made and provided.

Fourth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in

connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State, but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchan-
119 dise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the aforesaid business and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section one of the said Act of Congress, approved July 2, 1890, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Ala-

bama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company,
120 and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly engage in a conspiracy in restraint of commerce among the several States, to wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, whereby the said commerce was restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise which were maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the period of such unlawful conspiracy, and greatly in excess of those prices which would have otherwise prevailed in the said States during the period of such unlawful conspiracy, and were therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby earnest money was given to secure the maintenance of such prices and compensation was made to those losing volume of business by reason of maintaining such prices, that is to say:

There was from time to time allotted to each of said corporation

defendants and firms an amount of tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporations defendants and firms paid into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sums becoming due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which faithfully maintained such uniform and non-competitive prices and failed to make sales
121 and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but sold and delivered through itself and its subsidiary companies a minimum amount thereof required as a guarantee of good faith, received from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid fell short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies made such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, as a penalty upon such excess sales, paid into such common fund like amounts per ton on the said respective kinds of fertilizers, divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means whereby said unlawful conspiracy was effected, a corporation of Ontario, Canada, whose stock was apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was the common fund aforesaid into which was paid the earnest money and penalties on excess sales aforesaid, and from which was paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which the same was operated and directed.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that within the period aforesaid of said unlawful conspiracy in this count of this indictment mentioned, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and did do and perform such acts as acts on their respective parts of engaging in the said unlawful conspiracy in this count of this indictment mentioned, and that each of such defendants at the time and place when

and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that such
122 act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, and as an act on the part of such defendant in engaging in the same, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year, nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the
123 tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to

Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chatta-
124 nooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit,
125 "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawul conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec. 6, 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abraham C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P.
126 Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said corporation and individual defendants, during the period of time aforesaid, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

FIFTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen

hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the
127 other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, 23 it should have continued to be so

carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, approved July 2, 1890, the said corporation de-
128 fendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, and engage in a conspiracy among themselves and with such other unknown corporations and persons, in restraint of commerce among the several States, to-wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid by which unlawful conspiracy said commerce was to be restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the

various points of delivery in the said States of the conspiracy,
129 which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy, and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices, that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to make sales and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales as aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose
130 treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary

and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful conspiracy was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that such act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

131 In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one

Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesand, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company,
132 on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of

Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District
133 of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his, the said E. W. Connell's name as such Treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fer-

tilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tenneess, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn., Dec. 6 1904" and
134 above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for

the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

135 SIXTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United

States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An
136 Act to protect trade and commerce against unlawful restraints and monopolies"; that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorneys of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and in the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section 5440 of the Revised Statutes of the United States, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack,
137 George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Roys-

ter, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the United States, to wit, to engage in a combination in restraint of commerce among the several States, namely, a combination in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, and did then and there so conspire to commit the aforesaid offense by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy; and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices; that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to
138 make sales and deliveries of such merchandise through itself and its subsidiary — amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation

defendants and firms which, through itself and its subsidiary companies, should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful combination was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that
139 such act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the

object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at
140 West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and

within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchan-
141 dise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Arndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee,

unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Man-
142 ager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec 6 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee,

unlawfully did cause to be written and sent by mail to "D. P. Haynes and Bro.," at Oxford, Alabama, that certain letter of the date
143 set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley, By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did conspire to commit an offense against the United States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

ABRAM M. TILLMAN,
United States Attorney.

(Endorsed as follows:) No. 963. United States Circuit Court, Middle District of Tennessee. *The United States vs. Virginia-Carolina Chemical Company et als.*

Indictment for violating Act of Congress approved July 2, 1890, and entitled "An Act to Protect Trade and Commerce against unlawful restraints and monopolies," and Section 5440 R. S. U. S.

A True Bill. Robert Q. Stewart, Foreman of the Grand Jury.

Names of Witnesses Sworn and Examined Before the Grand Jury.

J. C. Adams, Henry E. Ahern, Lee Ashcraft, Eugene Atkinson, N. E. Barker, W. F. Barrett, James C. Beck, J. M. Berry, W. W. Bird, L. W. Botts, Clarence Braden, S. D. Bramlitt, A. P. Brantley,
B. D. Brantley, Dewitt Brown, H. C. Brown, Arthur Bussey,
144 Hezekiah Bussey, E. J. Blume, James A. Boyd, William F. Burns, Oscar Bright, J. W. Carter, B. G. Clark, C. W. Comes, E. W. Connell, Charles Earle Currie, R. L. Davis, Joseph Denee, W. P. Diehl, A. M. Dobbs, John V. Dobson, C. H. Drayton, W. L. Dumas, J. B. Duncan, S. Eastland, T. B. Edwards, Culpepper Exum, H. C. Fischer, J. B. Fiser, Albert French, C. A. Gambrill, A. H. George, John E. Gibbs, William Gilchrist, James M. Goldsmith, A. A. Green, E. P. Grice, W. A. Hansell, G. A. Harrington, H. J. Harby, Allen Hardison, L. C. Hayne, J. L. Haynes, D. P. Haynes, R. W. Henderson, P. W. Hendricks, E. R. Hodgson, junior, E. R.

Hodgson, senior, J. L. Horn, W. E. Hudson, T. J. Hunt, R. H. Johnston, T. V. Kessler, E. M. Kirk, Henry Kirn, H. L. Law, Alexander Leslie, J. A. Lindsey, W. Hampton Logan, Harry Luck, John A. Lewis, W. F. McKenzie, Robert F. Maddox, H. W. Malloy, E. R. Manning, H. L. Milligan, J. Allen Moore, M. B. Neece, W. J. Oliver, E. Thomas Orgain, D. B. Osborne, Every M. Paget, W. W. Perkins, Dr. J. D. Plunkett, F. B. Pope, William Price, Charles Rainey, Frederick Rayfield, Isaac W. Read, W. A. Reynolds, I. T. Rhea, W. E. Richards, H. A. Rogers, V. N. Roadstrum, W. G. Sadler, G. W. Sanders, E. M. Sentelle, W. McR. Smith, R. G. Sparrow, J. F. Stackley, C. A. Steifelmeyer, S. E. Stewart, W. B. Stratford, John Sutterer, E. R. Taber, Frank E. Taylor, W. B. Taylor, W. D. Tharin, J. R. Timmerman, J. W. Todd, S. W. Travers, George H. Tucker, E. Van Winkle, J. T. Welch, O. C. Wiley, C. H. Willcox, T. B. Williams, Benjamin L. Willingham, W. S. Wight, E. G. Woodling.

Filed 11:30 A. M., May 25, 1906. H. M. Doak, Clerk, by E. L. Doak, Deputy Clerk. Abram M. Tillman, U. S. Atty.

I, H. M. Doak, Clerk of the Circuit Court of the United States in and for the Middle District of Tennessee, hereby certify that the foregoing is a true, perfect, and complete copy of an indictment filed as thereupon endorsed, etc. In witness whereof I have hereunto signed my name and affixed the seal of said court, at my office, this the 26th day of May, 1906.

[SEAL OF COURT.] H. M. DOAK, *Clerk.*

145 *Warrant.*

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

To the Marshal of the Eastern District of Virginia, Greeting:

Whereas complaint in writing, on oath, has been made to me charging that J. Rice Smith, of Richmond, Va., stands indicted by the grand jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said J. Rice Smith on the eighth day of July, in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, did in the Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said J. Rice Smith did unlawfully conspire with divers other persons and corporations to com-

mit an offense against the said United States, to-wit, the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States; and application has been made to me that the said J. Rice Smith may be arrested and imprisoned and removed or bailed, as the case may be, for trial
146 before the said Circuit Court of the United States for the Middle District of Tennessee;

Now therefore, you are hereby commanded to arrest the said J. Rice Smith if he be found within your said District, and bring him forthwith before me at my Chambers in Richmond, in order that he may be dealt with according to law.

Richmond, Va., July 14", 1906.

EDMUND WADDILL, JR.,
U. S. District Judge.

Marshal's Return.

Pursuant to the within writ, I have taken the defendant, J. Rice Smith into custody and now have him before Hon. Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia.

July 14, 1906.

MORGAN TREAT,
United States Marshal.

Conclusions of the Court.

Filed July 14th, 1906.

THE UNITED STATES
vs.
J RICE SMITH.

The conclusion reached by the Court is that in a proceeding for the arrest and removal of persons charged with a violation of the laws of the United States pursuant to section 1014 of the Re-
147 vised Statutes of the United States, before a United States District Judge sitting in the State of Virginia, in which State there no longer exists the right of a preliminary examination upon a criminal charge prior to the trial upon the merits, when such Judge is called upon to act as well in the matter of the apprehension of such persons, as in their removal to the jurisdiction in which they have been indicted, that upon the government's presentation of a sufficient indictment regularly found by a grand jury in a court of the United States, properly charging the commission of an offense within the district in which such indictment is found, coupled with proof of the identity of the person indicted, it is its duty to properly bail such person for appearance before the Court in which he is indicted, or cause him to be removed thereto.

Order Allowing Bail.

Filed July 14th, 1906.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The within named J. Rice Smith having been brought before me, and identified; and it appearing by a duly authenticated copy of an indictment that he stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al,*" for violation of section one of the act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United
148 States, it is ordered that the said J. Rice Smith give bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial before said Court under the said indictment, or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee, to be there dealt with according to law.

Richmond, Va., July 14", 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the
Eastern District of Virginia.

Warrant of Imprisonment and Removal.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The President of the United States to the United States Marshal of the Eastern District of Virginia, Greeting:

Whereas it has been made to appear that J. Rice Smith stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled: "The United States *vs.* Virginia-Carolina Chemical Company *et al,*" for violation of section one of the act of Congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States; and whereas the said J. Rice Smith having been brought before me, and identified; and a certified copy
149 of said indictment furnishing probable cause to believe him to be guilty as therein charged, and whereas it was thereupon ordered by me that said defendant give bail in the sum of five thousand dollars with one or more sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial under said indictment, or that in default thereof

he be imprisoned for seasonable removal to the said Middle District of Tennessee to be there dealt with according to law; and the said defendant having failed and refused to give — as required, therefore:

You are hereby commanded in the name and by the authority of the said United States to imprison the said J. Rice Smith in accordance with law, and that with all convenient speed you remove him hence to the said Middle District of Tennessee and there surrender him to the Marshal of that District, there to be dealt with according to law.

Richmond, Va., July 14, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the
Eastern District of Virginia.

Marshal's Return on Foregoing Warrant

Executed July 14, 1906, by taking the within named defendant J. Rice Smith into custody, but before the order of removal was executed, a writ of *Habeas Corpus* was issued by order of the Circuit Court of the United States for the Eastern District of Virginia, sitting at Richmond, Virginia, commanding me to produce the body of the said J. Rice Smith before the said United States Circuit Court in the City of Richmond, Virginia, forthwith, and in
pursuance of said writ of *Habeas Corpus*, I took the said J.
150 Rice Smith before the United States Circuit Court as aforesaid, by which court said writ of *Habeas Corpus* was discharged and an appeal allowed to the said J. Rice Smith to the Supreme Court of the United States, pending which appeal the said J. Rice Smith was by order of said Circuit Court discharged from custody on bond conditioned for his appearance before said Circuit Court to abide such order as should be made by said Circuit Court upon return of the mandate of said Supreme Court of the United States upon determination of said appeal.

Richmond, Virginia, July 14, 1906.

MORGAN TREAT,
United States Marshal.

Statement of Proceedings and Order.

Filed July 14, 1906.

THE UNITED STATES OF AMERICA, *Eastern District of Virginia:*

THE UNITED STATES
vs.
J. RICE SMITH.

This is an application under the provisions of Section 1014 of the United States Revised Statutes for a warrant for the removal of

J. Rice Smith to the Middle District of Tennessee and comes before me as follows:—

151 The District Attorney for this District, together with Mr. E. T. Sanford, Counsel for the United States, presented to me a verified complaint of Morgan Treat, United States Marshal for this District, with a certified copy of an Indictment filed on May 25th, 1906, in the Circuit Court of The United States for the Middle District of Tennessee in the case of the United States *vs.* Virginia-Carolina Chemical Company and other defendants, including among such defendants the said J. Rice Smith.

Said complaint and copy of said indictment are made parts of this order. Upon the exhibition of this Indictment and affidavit and the *ex parte* motion of the counsel for the United States I made an order for the arrest of said J. Rice Smith and his production before me.

This order was duly executed by the said Marshal, who arrested the said J. Rice Smith and brought him before me in Richmond on this 14th day of July, 1906, as shown by his return. When the accused was so brought before me it was moved by the counsel for the United States that inasmuch as the indictment charged offenses against the United States triable in the Circuit Court of said United States for the Middle District of Tennessee, and the identity of the defendant was admitted, that an order be forthwith made for the commitment of said J. Rice Smith for trial before said Circuit Court.

This motion was made upon the certified copy of the Indictment without any further testimony, the identity of the party arrested and brought before me as the J. Rice Smith mentioned in the Indictment being admitted.

152 And thereupon the defendant J. Rice Smith offered himself as witness in his own behalf, and being about to be sworn, the United States, by its Counsel, thereupon objected to the witness being sworn, or to any testimony being given in rebuttal of the indictment in these proceedings on the ground that the identity of the defendant being admitted, inasmuch as the indictment on its face charges offenses against the United States committed and triable in the jurisdiction in which the defendant stands indicted, no evidence is admissible here to impeach the indictment, and the order of commitment should be made without other proof.

The Defendant's counsel thereupon offered to prove by the defendant, and other witnesses then and there present, that the Circuit Court for the Middle District of *the Middle District of* Tennessee had no jurisdiction over the person of said defendant touching the offense charged in said indictment, in that defendant and said witnesses would, if permitted, testify

That he was not on the 8th day of July, 1903, or during the period of time between the eighth day of July, 1903, and the 1st day of September, 1905, in the State of Tennessee, or the Middle District of Tennessee and that he has not been in the Middle District of Tennessee or the State of Tennessee since June, 1900; that he did not enter, assent to, join or engage in the conspiracies in the indictment

mentioned, or any of them within the Middle District of Tennessee at the time mentioned therein, or at any other time; that he did not within the period mentioned, or at any other time within the Middle District of Tennessee do any act or thing to promote
153 or further the said conspiracies in the indictment mentioned or any of them, or to effect the object or purposes thereof; that he did not at any time or any place join, assent to, enter or engage in the conspiracies, or any of them, alleged or averred in the said indictment in the Middle District of Tennessee. Nor has the defendant done, or performed, or been engaged in, or a party to the same, or any of them in any other place or places at any other time or times whatsoever.

Thereupon counsel for the Government renewed its objections as aforesaid.

After hearing counsel on both sides, the Court announced its conclusions as follows:—

"The conclusion reached by the Court is that in a proceeding for the arrest and the removal of persons charged with a violation of the laws of the United States pursuant to section 1014 of the Revised Statutes of the United States, before a United States District Judge, sitting in the State of Virginia, in which State there no longer exists the right of a preliminary examination upon a crime charged prior to the trial upon the merits, when said Judge is called upon to act as well in the matter of the apprehension of such persons, as in their removal to the jurisdiction in which they have been indicted, that upon the government's presentation of a sufficient indictment regularly found by a grand jury in a court of the United States, properly charging the commission of an offense within the district in which such indictment is found, coupled with proof of the identity of the person indicted, it is its duty to properly bail such person for appearance before the court in which he is indicted, or cause him to be removed thereto."

Therefore, it was ordered that the testimony offered is inadmissible, and will not be received, and I therefore made the
154 following order:

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The within named J. Rice Smith having been brought before me, and identified; and it appearing by a duly authenticated copy of the indictment that he stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al.,*" for violation of section one of the act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States, it is ordered that the said J. Rice Smith give bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial before said

Court under the said indictment; or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee, to be there dealt with according to law.

Richmond, Va., July 14", 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

And after said order had been made and the defendant declined to give bond, the Counsel for the United States moved that the warrant do issue directed to the Marshal of this District for the
155 imprisonment and removal of the said J. Rice Smith to the Middle District of Tennessee and his delivery to the custody of the United States Marshal of that district.

On such motion counsel for said J. Rice Smith objected and again offered the said J. Rice Smith as a witness, together with the other witnesses herebefore referred to, to establish the same matters and facts as hereinbefore stated with regard to the objection to the order for the commitment of the said J. Rice Smith, which testimony was again offered and was again objected to by the counsel for the United States on the same grounds as above set forth, and on the further ground that these matters could not now be inquired of in this stage of the proceedings, and was again excluded by the court, to all of which counsel for the said J. Rice Smith duly excepted and had the exceptions noted and entered.

I therefore issued a warrant directed to the Marshal as follows:

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

Richmond, Va., July 14", 1906.

Warrant of Imprisonment and Removal.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The President of the United States to the United States Marshal of the Eastern District of Virginia, Greeting:

Whereas it has been made to appear that J. Rice Smith stands indicted in the Circuit Court of the United States for the Mid-
156 dle District of Tennessee in cause No. 963 in said Court entitled: "The United States *vs.* Virginia-Carolina Chemical Company *et al*," for violation of section one of the act of Congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States; and whereas the said J. Rice Smith having been brought before me, and identified; and a certified copy of said indictment furnishing probable cause to believe him to be guilty as therein charged, and whereas it was thereupon ordered by me that said defendant give bail in the sum of five thousand dollars with one or more sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial under said indictment, or that in default thereof he

be imprisoned for seasonable removal to the said Middle District of Tennessee to be there dealt with according to law; and the said defendant having failed and refused to give bail as required, therefore:

You are hereby commanded in the name and by the authority of the said United States to imprison the said J. Rice Smith in accordance with law, and that with all convenient speed you remove him hence to the said Middle District of Tennessee and there surrender him to the Marshal of that District, there to be dealt with according to law.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

Richmond, Va., July 14, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

Richmond, Va., July 14, 1906.

157 *Certificate of Clerk.*

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

I, G. E. Bowden, Clerk of the District Court of the United States for the Eastern District of Virginia, do hereby certify that the foregoing is a full and true transcript of the record and proceedings in the therein entitled cause made in obedience to the direction in the return of the Honorable Edmund Waddill, Jr., Judge of said Court to the writ of certiorari, attached to and made a part of said record.

In witness whereof, I have hereunto set my hand and affixed the seal of the said District Court, at the City of Richmond, this 14th day of July, A. D. 1906.

[Seal United States District Court.]

G. E. BOWDEN,
Clerk United States District Court,
By JOSEPH P. BRADY,
Deputy Clerk U. S. District Court.

Certificate of United States District Judge.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

I, Edmund Waddill, Jr., Judge of the District Court of the United States for the Eastern District of Virginia do hereby certify that the foregoing is a full and true transcript of the records and
158 proceedings had before me in the therein entitled cause.

In witness whereof, I hereunto set my hand and seal of said court at Richmond, this 18th day of July, A. D., 1906.

[Seal United States District Court.]

EDMUND WADDILL, JR.,
United States District Judge.

159 *Conclusions of the Court.*

Filed July 14th, 1906.

In the United States Circuit Court for the Eastern District of Virginia.

In the Matter of the Petition of J. RICE SMITH for Writs of *Habeas Corpus* and Certiorari.

J. RICE SMITH, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

Petitioner alleges that he is unlawfully deprived of his liberty. He prays that by virtue of the writ of *Habeas Corpus*, he may be discharged from custody. I find from the petition, from its exhibits, and from respondent's reply that petitioner has been committed to the Marshal of the Eastern District of Virginia by an order of the United States District Judge of that District, with directions to remove petitioner to the Middle District of Tennessee, in order that he may be there tried on an indictment in which he with others, is charged with a violation of the laws of the United States. The proceedings so resulting were conducted under the provisions of section 1014 of the Revised Statutes of the United States. The Judge so hearing the matter, and so issuing said order of removal, acted in conformity with like proceedings, as provided for in criminal actions in the state of Virginia, in which state petitioner resides, and where the application for his removal was made.

160 On the hearing of this petition, I am asked to permit petitioner to offer testimony, the object of which is to show that probable cause does not exist as to petitioner's guilt of the offense of which he is charged; that he was not within the limits of the jurisdiction of the Middle District of Tennessee when said offense is alleged to have been committed; and testimony tending to show that he is innocent of the charge alleged in the indictment returned against him. Petitioner insists that he should not be removed to said Middle District of Tennessee for trial, but should be discharged from arrest. Should I, on this hearing, permit such testimony? I find from the record before me, that the indictment charges conspiracy; that it is alleged therein that petitioner with others, did in the Middle District of Tennessee, conspire to commit an offense against the laws of the United States. The indictment, in my judgment, sufficiently sets forth such offense. I find that it is in due form, and that it charges a crime; that it alleges a conspiracy such as is prohibited by the laws of the United States; and that an overt act, as described in the statute is charged as having taken

place in the Middle District of Tennessee. Such being the charge, I am of the opinion, under the law applicable thereto, that the personal presence of petitioner in said jurisdiction was not essential; and that he can be lawfully proceeded against in that district; and if the allegations set out in the indictment are sustained by competent evidence, that a conviction there can be upheld.

If such be the case, does it not follow that the testimony offered by the petitioner is immaterial? The indictment charges the commission of a crime; alleges that the petitioner with others committed it; and the laws authorizes his conviction in the district to which he has been ordered removed, if an overt act in pursuance of
161 said conspiracy was committed there. Technical objections to said indictment should not be considered by me on this hearing; they should only be heard by the court in which the indictment was returned.

While it is true that the order to remove for trial should only be issued in cases where probable cause has been shown, it is equally true that a certified copy of the indictment, with proof of the identity of the party accused, has been in a number of well considered cases, held to establish probable cause, and to authorize the warrant of removal. It must be conceded that the authorities are conflicting; but to my mind the path we should follow has been plainly indicated by the opinions of that great tribunal, whose mandates we all obey, whose judgments are the supreme law of the land. In Beavers *v.* Hanckel, 194 U. S., 73, the case rested on the efficacy of the indictment; for no other evidence of guilt was offered. The indictment was held to be *prima facie* evidence of the existence of probable cause. It satisfied the requirements of the constitution, and the laws made thereunder. Why should not the indictment in the case we now have under consideration serve the same purpose? The testimony tendered is, as I understand this case, immaterial, and the identity of the accused is admitted. His guilt or innocence is not to be ascertained by testimony offered in this jurisdiction, in connection with questions involved in the proceedings relating to the warrant of removal, or this writ of *habeas corpus*. That matter must go to the jury impaneled by the court in which the indictment was returned. To hold otherwise would result in inextricable confusion, and to discharge the petitioner on the showing now made, would tend to impede the due administration of justice; and can
162 only be done, in my opinion, by a strained construction of the statutes.

The writ will be dismissed, and petitioner will be remanded to the custody of the Marshal.

NATHAN GOFF,
U. S. Circuit Judge.

July 14th, 1906.

Order Dismissing Petition and Discharging Writ of Habeas Corpus and Allowing Appeal.

Filed July 14th, 1906.

In the Circuit Court of the United States for the Eastern District of Virginia.

In the Matter of the Petition of J. RICE SMITH for Writs of *Habeas Corpus* and Certiorari.

J. RICE SMITH, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

This cause was on this, the 14th day of July, 1906, heard before the Honorable, the Circuit Court of the United States for the Eastern District of Virginia, the Honorable Nathan Goff, Circuit Court Judge, presiding, upon the petition of said J. Rice Smith in this cause and the return of the Marshal, the defendant, thereto,
163 and the return of the District Judge of the Eastern District of Virginia (by agreement the copy of the findings and order of said District Judge being here now taken as his return to said writ of certiorari, and the motion of the petitioner, by his counsel, hereinafter mentioned.

The petition and the return of the Marshal thereto were read, and thereupon the petitioner presented himself as a witness and his counsel moved the Court that he be sworn in order to testify as such, and as such witness to prove the facts averred and set forth in said petition, which facts were then and there repeated and restated to the Court; and his counsel then also stated that the said witness, and other persons then present as witnesses, would testify and prove that the said facts set forth and averred in the petition and exhibits, and repeated by him to the Court, were true.

Thereupon the Honorable Edward T. Sanford, Special Counsel representing the United States, and also the defendant Marshal, objected to the swearing of the said petitioner as a witness and also to the admission of said evidence, upon the ground that said evidence was immaterial and irrelevant, and that it was not allowable to contradict or transverse by evidence in this Court the averments of the indictment which had been found against the petitioner in the Circuit Court of the United States for the Middle District of Tennessee, and that there was no error in the action of the District Judge. The objection so made was sustained, and the witness not allowed to be sworn nor allowed to testify to the facts above stated, to which action of the Court the petitioner then and there expected.

Thereupon it was ordered and adjudged by the said Cour
164 that the petition be dismissed and the writ of *habeas corpus* heretofore issued in this cause upon the said petition be and the same is hereby dismissed and discharged; and that the said J. Rice Smith be remanded to the custdoy of said Morgan Treat, U. S. Marshal, for the Eastern District of Virginia, to be dealt with by him according to the directions of the writ of the process under which he had custody of the said J. Rice Smith.

Thereupon, the petitioner presented his petition, setting forth that he was aggrieved by the said order dismissing the said writ of *habeas corpus,* and praying that he be allowed to prosecute an appeal from said final order or judgment, to the Supreme Court of the United States under and according to the law of the United States in that behalf made together with his assignment of error in that behalf which appeal is allowed; and the petitioner having been allowed and the said appeal being hereby granted, the petitioner, by his counsel, thereupon moved the Court that he be enlarged or admitted to bail pending the decision of his said case upon said appeal; and thereupon it was accordingly ordered that the said petitioner and appellant be, and he is hereby enlarged upon his bond and admitted to bail, pending the said appeal to the Supreme Court of the United States; said bond to be in the penal sum of $5,000.00, to be taken and approved by the Clerk of this Court and conditioned for the said petitioner and appellant to appear before this Court to abide such order as shall be made by this Court upon the mandate of the Supreme Court of the United States upon the determination of petitioner's said appeal; and upon the execution by the said J. Rice Smith of such bond, with surety or sureties, to be approved by the Clerk of this Court, he will be enlarged and admitted to bail. The Clerk will take as surety any satis-
165 factory guaranty company.

The opinion of the Court in dismissing the petition and discharging the writ of *habeas corpus* is made part of the record herein and will be copied by the Clerk in the transcript on appeal.

NATHAN GOFF,
U. S. Circuit Judge.

July 14, 1906.

Appearance Bond.

Filed July 14th, 1906.

In the Circuit Court of the United States for the Eastern District of Virginia.

In the Matter of the Petition of J. RICE SMITH for Writs of *Habeas Corpus* and Certiorari.

J. RICE SMITH, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

We, as principal, and American Surety Company of New York a guaranty and surety company, organized and existing under the laws of the State of New York, with power and authority to become surety for principals in appearance bonds, jointly and severally acknowledge ourselves to owe and to be bound to the United States of America in the penal sum of Five Thousand Dollars ($5,000.00), severally to be made and levied of our goods, chattels, lands and tenements, if default be made herein.

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The condition of this obligation is as follows: Whereas the said J. Rice Smith, being detained in the custody of Morgan Treat, United States Marshal for the Eastern District of Virginia, under commitment and warrant of removal to the Circuit Court of the United States for the Middle District of Tennessee, granted by the Honorable Edmund Waddill, Jr., Judge of the District Court for the Eastern District of Virginia, presented his petition for and sued out a writ of *habeas corpus* from the Circuit Court of the United States for the Eastern District of Virginia, and the said writ of *habeas corpus* duly issued to the said Treat, Marshal, and he made his return thereto; and the said matter of *habeas corpus* came on for hearing before the said Circuit Court of the United States for the Eastern District of Virginia, on the 14th day of July, 1906, when by order thereof the said petition was dismissed and the said writ of *habeas corpus* discharged, and the said J. Rice Smith remanded to the custody of the said Morgan Treat, Marshal, to be proceeded with as provided by law; and

Whereas, from the said final order dismissing the said petition and writ of *habeas corpus*, the said J. Rice Smith prayed an appeal to the Supreme Court of the United States, which was granted and said appeal perfected; and

Whereas, the said Circuit Court of the United States allow- said appeal, ordered that pending said appeal the said J. Rice Smith upon the execution of a bond in the penal sum of Five Thousand Dollars ($5,000.00), conditioned as by said order was provided, might be enlarged and admitted to bail;

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Now, therefore, in compliance therewith, and in order to be so enlarged, the said J. Rice Smith as principal, and the said American Surety Company of New York, as surety, execute this bond upon the condition that, if the said J. Rice Smith shall duly personally appear in and before the Circuit Court of the United States for the Eastern District of Virginia, then and there to answer the exigency and determination of said appeal, and personally abide the final decision and determination of the said Supreme Court of the United States and of the said Circuit Court of the United States, upon the mandate of the said Supreme Court of the United States, and obey and abide the orders of said Circuit Court of the United States, and not depart without leave upon the conditions aforesaid, and upon the entry of said orders upon said appeal, then and in that event this bond or obligation shall be void; but otherwise it shall be and remain in full force and effect.

In witness whereof, the said J. Rice Smith as principal, and the said American Surety Company of New York as surety, the said surety being represented by and through Robert Le Masurier, its duly authorized agent and attorney, have hereunto on this the 14th day of July, 1906, set their hands.

J. RICE SMITH. [SEAL.]

[Seal of American Surety Company.]

AMERICAN SURETY COMPANY OF NEW YORK,
By ROB'T LE MASURIER, *Agent.*

Signed, sealed and delivered in the presence of
JOSEPH P BRADY, *Clerk.*

168 *Notice of Appeal.*

Filed July 14th, 1906.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of J. RICE SMITH for Writs of *Habeas Corpus* and Certiorari.

J. RICE SMITH, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia; JOSEPH P. BRADY, Deputy Clerk of the District Court of the United States for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

SIRS: Please take notice that J. Rice Smith petitioner above named hereby appeals to the Supreme Court of the United States from the final order made and entered on the 14th day of

July, 1906, by the Honorable Nathan Goff, Judge of the Circuit Court of the United States, Fourth Judicial Circuit of Virginia, discharging his application for writs of *habeas corpus* and certiorari and from each and every part of said order.

Dated at the City of Richmond, State of Virginia, on the 14th day of July, 1906.

Respectfully,

JOHN J. VERTRESS,
JAMES C. BRADFORD,
JOHN S. MILLER,
Attorneys for Petitioner and Appellant.

169 *Petition for Appeal.*

Filed July 14th, 1906.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of J. RICE SMITH for Writs of *Habeas Corpus* and Certiorari.

J. RICE SMITH, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

The petition of the above named petitioner, J. Rice Smith, for an order allowing an appeal to the Supreme Court of the United States from the final order in the above styled cause, discharging the writs of *habeas corpus* and certiorari in this cause and remanding petitioner to the custody of the said Morgan Treat, United States Marshal.

J. Rice Smith, the petitioner and appellant above named, feeling himself aggrieved by the final order heretofore made and entered by this Court in this cause on the 14th day of July, 1906, whereby it was ordered that his petition for a writ of *habeas corpus*, directed to said Morgan Treat, United States Marshal, in and for the said District of Virginia, and his writ of certiorari, directed to Hon. Edmund Waddill, Jr., United States District Judge for said
170 District, commanding him to return all the proceedings, warrants, depositions, examinations, commitments and record of all proceedings against your petitioner to the Circuit Court of the United States, were, after the same had been duly granted and return made thereon by this Honorable Court, discharged, and petitioner was by said order remanded to the custody of said Morgan Treat, United States Marshal, as aforesaid.

Now come, Jno. J. Vertress and Jas. C. Bradford, his attorneys

and counsel, praying this court for an order allowing your petitioner to prosecute an appeal from said final order of the United States Circuit Court to the Supreme Court of the United States, and according to the laws of the United States in that behalf made.

Your petitioner is advised by his counsel that *in* the proceedings referred to in the petition for writs of *habeas corpus* and certiorari, and the said order discharging the same have infringed the constitutional rights of your petitioner and that the commitment of your petitioner and the restraint of his person referred to in said petition and under said order is without authority of law and that the said United States District Judge acting as United States Commissioner, before whom your petitioner was arraigned, as set forth in said petition hereinbefore referred to had no jurisdiction to either require bail of petitioner or to commit petitioner in default thereof, and your petitioner desires in good faith to submit the constitutional questions and other questions involved to the Supreme Court of the United States for their determination.

And your petitioner will ever pray, etc.

JOHN J. VERTRESS,
JAMES C. BRADFORD,
JOHN S. MILLER,
Attorneys for Petitioner and of Counsel.

171 UNITED STATES OF AMERICA, *Eastern District of Virginia:*

J. Rice Smith, being duly sworn on his oath, deposes and says that he is the petitioner above named, that the foregoing petition is true of his own knowledge, except as to those matters which are therein stated on his information and belief, and as to those matters, he believes them to be true.

Sworn to before me this 14th day of July, 1906.

JOSEPH P. BRADY,
Clerk of the United States Circuit Court,
Eastern District of Virginia.

Assignment of Errors.

Filed July 14th, 1906.

In the Supreme Court of the United States.

In the Matter of the Petition of J. RICE SMITH for Writs of *Habeas Corpus* and Certiorari.

J. RICE SMITH, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

172 The petitioner, J. Rice Smith, by John J. Vertress and Jas. C. Bradford and John S. Miller, his Counsel in connection with his petition of appeal herein, entered herein,

to the Supreme Court of the United States, from the final order made and entered in the United States Circuit Court of the Fourth Judicial Circuit in and for the Eastern District of Virginia, discharging the writs of *Habeas Corpus* and certiorari and remanding petitioner to the custody of the said Morgan Treat, Marshal, *and* makes and files the following assignment of errors:

1. The court erred in discharging the petitioner's writs of *Habeas Corpus* and Certiorari and remanding him to the custody of the United States Marshal.

2. In refusing to grant the prayer of said writs.

3. In refusing to discharge said petitioner.

4. In holding that the restraint of the petitioner's liberty is legal.

5. In holding that the restraint of your petitioner is not in violation of his substantial rights.

6. In holding that said alleged indictment or any count thereof stated an offence against the laws of the United States.

7. In holding that the alleged indictment, or any count thereof was sufficient upon which to base a warrant of removal.

8. In holding that there was sufficient evidence of probable cause.

9. In holding that the warrant of removal made by the United States District Judge for the Eastern District of Virginia was issued upon the finding of probable cause; and in not holding that said order & warrant of removal were unauthorized & void because said District Judge refused to receive or hear any evidence offered by petitioner.

10. In holding that the alleged indictment with proof of
173 identity was conclusive evidence of probable cause.

11. In holding that upon the introduction in evidence of the alleged indictment with proof of identity that the defendant, your petitioner, was not entitled to introduce evidence offered by him and in refusing to hear or receive any evidence offered by him to show that the alleged offence, charged in said indictment and in each count thereof had not been committed by him in the State of Tennessee, in which state the indictment was found and in so holding, violating Article V and Article VI of the Amendments to the Constitution of the United States in that he was deprived of his liberty without due process of law.

12. In failing to hold that your petitioner is deprived of his liberty without due process of law in violation of Article V of the Amendments to the Constitution of the United States, in that said District Judge refused to hear or receive any evidence offered by your petitioner in that the complaint and evidence referred to herein, which were the sole authority for the petitioner's arrest and commitment as aforesaid failed to charge the petitioner with any crime against the laws of the United States.

13. In failing to hold that the petitioner's detention was in violation of Article V of the amendments to the Constitution of the United States in that the said United States District Judge, sitting as United States Commissioner and the United States District Judge has such jurisdiction to order the arrest and commitment of your

petitioner, and that your petitioner is held to answer for a crime without any sufficient or valid indictment of a grand jury.

14. In failing to hold that restraint of your petitioner is in violation of Article IV of the Amendments to the Constitution of the United States, because it appears from the indictment upon
174 which the warrant in this case was issued that it was wholly void.

15. In failing to hold — the restraint of your petitioner is in violation of the provisions of Article IV of the amendments to the Constitution of the United States for the reasons particularly specified in his petition for a writ of *habeas corpus.*

16. In holding that a warrant of removal should issue for the reason that the proceedings conclusively show, by the indictment that the venue for the facts alleged in the indictment is not and was not in the Middle District of the State of Tennessee or in the State of Tennessee.

17. In failing to hold that the restraint of your petitioner is in violation of the provisions of Article VI of the amendments to the constitution of the United States for the reason that upon the proof offered to be made and rejected by the United States District Judge, sitting as a commissioner, and the United States District Judge and this Honorable Court, sitting upon the hearing of the petition of *habeas corpus,* and by the averments of said petition which were not controverted, it was conclusively shown that the offences charged in the indictment were not committed in the Middle District of the State of Tennessee or in the State of Tennessee, and that he could not be lawfully tried by a jury of the State of Tennessee and of the Middle District of Tennessee where said indictment was found.

18. In holding that the warrant of removal was properly issued, as the record and proceedings conclusively show that the alleged offence, complained of in the indictment and the several counts thereof, did not occur within the Middle District of the State of Tennessee, or in the State of Tennessee, and that your pe-
175 titioner did not conspire to commit any offence within the State of Tennessee, or in the Middle District thereof.

19. In holding that your petitioner was lawfully in the custody of said Morgan Treat, United States Marshal in and for the Eastern District of Virginia, and was lawfully deprived of his liberty by him by due process of law.

20. For other errors appearing on the record, by reason whereof, the petitioner prays that the said order, discharging said writs of *Habeas Corpus* and Certiorari be reversed and the petitioner discharged from custody.

JOHN J. VERTRESS,
JAMES C. BRADFORD,
JOHN S. MILLER,
Attorneys for Petitioner and Appellant.

Appeal Bond.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of J. RICE SMITH for Writs of *Habeas Corpus* and Certiorari.

J. RICE SMITH, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

176 Know all men by these presents, that, we, J. Rice Smith and James G. Tinsley his surety, are held and firmly bound unto the United States of America, in the full and just sum of Five hundred dollars to be paid to the United States, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this 14th day of July, 1906.

Whereas, lately, to-wit; on the 14th day of July, 1906, at the Circuit Court of the United States, in and for the Fourth Judicial Circuit, Eastern District of Virginia, in a proceeding therein pending, an order was entered discharging the writs of *habeas corpus* and certiorari, of the above named petitioner in the above mentioned proceeding and said petitioner having duly obtained an appeal from the said order to the Supreme Court of the United States and filed a copy thereof in the Clerk's office of said Circuit Court to review the same,

Now, the Condition of the Above Obligation, is such, that if the said petitioner J. Rice Smith, shall prosecute said appeal to effect and shall answer all costs if he should fail to make said appeal good, then this obligation to be void; else to remain in full force and effect.

J. RICE SMITH. [SEAL.]
JAMES G. TINSLEY. [SEAL.]

Sealed, and delivered, and taken and acknowledged, this 14th day of July, 1906, before me,

JOSEPH P. BRADY, *Clerk.*

UNITED STATES OF AMERICA,
Eastern District of Virginia, To wit:

177 James G. Tinsley being duly sworn says that he is worth more than the sum of Five Hundred Dollars, over and above all his just debts and liabilities.

Sworn to before me this 14th day of July, 1906.

JOSEPH P. BRADY, *Clerk.*

Citation.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of J. RICE SMITH for Writs of *Habeas Corpus* and Certiorari.

J. RICE SMITH, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia; Jos. P. BRADY, Deputy Clerk of the District Court of the United States for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Judge L. L. Lewis, United States District Attorney for the Eastern District of Virginia; Jos. P. Brady, Clerk of the United States Circuit Court for the Eastern District of Virginia; Morgan Treat, United States Marshal in and for the Eastern District of Virginia; Hon. Edmund
178 Waddill, Jr., United States District Judge for the Eastern District of Virginia, and Jos. P. Brady, Deputy Clerk of the United States District Court for the Eastern District of Virginia:

You are cited and admonished to be and appear at the Supreme Court of the United States at the City of Washington, within thirty days from the date of this writ, pursuant to an appeal duly allowed by the Circuit Court for the Fourth Judicial Circuit, Eastern District of Virginia and filed in the Clerk's Office of said Court on the 14th day of July, 1903, in the cause entitled, in the manner of the petition of J. Rice Smith for writs of *habeas corpus* and certiorari, J. Rice Smith, appellant, *versus*, Morgan Treat, United States Marshal in and for the Eastern District of Virginia, Jos. P. Brady, Deputy Clerk of the District Court of the United States in and for said Eastern District of Virginia, and Hon. Edmund Waddill, Jr., United States District Judge in and for said Eastern District of Virginia, Appellees, to show cause, if any, why the final order of said Circuit Court, rendered against the appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Hon. Nathan Goff, Judge of the United States Circuit Court, this 14th day of July, A. D., 1906.

NATHAN GOFF,
Judge of the Circuit Court of the United States.

Acceptance of Service by United States District Judge.

Legal service of the within Citation is hereby acknowledged this 21st July, 1906.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

179 *Marshal's Return.*

Executed this 23rd day of July 1906, by delivering in person in the City of Richmond, Va., a true copy of the within citation to the following named persons viz: L. L. Lewis United States District Attorney for the Eastern District of Virginia, Joseph P. Brady Clerk of the United States Circuit Court for the Eastern District of Virginia, Joseph P. Brady Deputy Clerk of the United States District Court for the Eastern District of Virginia.

MORGAN TREAT,
United States Marshal.

Further executed this 23rd day of July 1906, by delivering in person in the City of Richmond, Va. to Morgan Treat United States Marshal for the Eastern District of Virginia, a true copy of this citation.

MORGAN TREAT,
United States Marshal,
By M. J. ENRIGHT,
Office Deputy Marshal.

180 *Order Transmitting Record.*

And thereupon, it is ordered by the Court here that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the Supreme Court of the United States of America, and the same is transmitted accordingly.

Teste:

JOSEPH P. BRADY,
Clerk United States Circuit Court.

Clerk's Certificate.

THE UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

I, Joseph P. Brady, Clerk of the Circuit Court of the United States for the Eastern District of Virginia, do hereby certify that the foregoing is a full and true transcript of the record and proceedings of the said Circuit Court, together with all things thereunto relating, in the therein entitled cause.

In testimony whereof, I hereunto set my hand and affix the seal of the said Circuit Court of the United States for the Eastern District of Virginia, at Richmond, this 10th day of August, A. D. 1906.

[Seal United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Endorsed on cover: File No. 20,342. E. Virginia C. C. U. S. Term No. 377. J. Rice Smith, appellant, *vs.* Morgan Treat, United States Marshal in and for the eastern district of Virginia, *et al.* Filed August 14, 1906. File No. 20, 342.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 378.

CHARLES F. BURROUGHS, APPELLANT,

vs.

MORGAN TREAT, UNITED STATES MARSHAL IN AND FOR THE EASTERN DISTRICT OF VIRGINIA, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

FILED AUGUST 14, 1906.

(20,343.)

(20,343.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906.

No. 378.

CHARLES F. BURROUGHS, APPELLANT,

vs.

MORGAN TREAT, UNITED STATES MARSHAL IN AND FOR THE EASTERN DISTRICT OF VIRGINIA, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

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a In the Supreme Court of the United States.

In re Petition of CHAS. F. BURROUGHS for Writs of *Habeas Corpus* and Certiorari.

CHAS. F. BURROUGHS, Appellant,

vs.

MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia; JOS. P. BRADY, Deputy Clerk of the District Court of the United States for the Eastern District of Virginia, and Hon. EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Judge L. L. Lewis, United States District Attorney for the eastern District of Virginia; Jos. P. Brady, Clerk of the United States Circuit Court for the eastern district of Virginia; Morgan Treat, United States Marshal in and for the eastern District of Virginia; Hon. Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia, and Jos. P. Brady, Deputy Clerk of the United States District Court for the eastern District of Virginia:

You are cited and admonished to be and appear at the Supreme Court of the United States at the City of Washington, within thirty days from the date of this writ, pursuant to an appeal duly allowed by the Circuit Court for the Fourth Judicial Circuit, Eastern District of Virginia, and filed in the Clerk's office of said Court on the 14th day of July, 1906, in the cause entitled, in the matter of the
b petition of Charles F. Burroughs for writs of *habeas corpus* and certiorari, Charles F. Burroughs, appellant, *versus* Morgan Treat, United States Marshal in and for the eastern District of Virginia, Jos. P. Brady, Deputy Clerk of the District Court of the United States in and for said eastern District of Virginia, and Hon. Edmund Waddill, Jr., United States District Judge, in and for said Eastern District of Virginia, Appellees, to show cause, if any, why the final order of said Circuit Court, rendered against the appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Hon. Nathan Goff, Judge of the United States Circuit Court, this 14th day of July, A. D., 1906.

NATHAN GOFF,
Judge of the Circuit Court of the United States.

c Legal service of the within citation is hereby acknowledged this 21st July, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge.

Executed this 23rd day of July 1906, by delivering in person in the City of Richmond, Va. a true copy of the within citation to the following named persons viz: L. L. Lewis United States District Attorney for the Eastern District of Virginia, Joseph P. Brady Clerk of the United States Circuit Court for the Eastern District of Virginia, Joseph P. Brady Deputy Clerk of the United States District Court for the Eastern District of Virginia.

MORGAN TREAT,
United States Marshal.

Marshal's Fees for service $6.00.

Further executed this 23rd day of July 1906 by delivering in person in the City of Richmond, Va. to Morgan Treat United States Marshal for the Eastern District of Virginia, a true copy of this citation.

MORGAN TREAT,
United States Marshal,
By M. J. ENRIGHT,
Office Deputy Marshal.

Marshal's Fees for service $2.00.

d [Endorsed:] No. —. Circuit Court of the U. S., Eastern District of Virginia. In the matter of the Petition of Chas. F. Burroughs for Writs of *Habeas Corpus* and Certiorari. Chas. F. Burroughs, Appellant, *vs.* Morgan Treat, United States Marshal, &c., *et als.*, Appellees. Citation. Filed this 14th day of July, 1906. Joseph P. Brady, Clerk.

1 *Transcript of Record.*

THE UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

At a Circuit Court of the United States for the Eastern District of Virginia, begun and held at the Court Rooms in the Custom House, in the City of Richmond, Virginia, on the first Monday in April, being the second day of the same month, in the year of our Lord one thousand, nine hundred and six.

Present: The Honorable Nathan Goff, Judge of the Circuit Court of the United States for the Eastern District of Virginia.

Among other were the following proceedings, to-wit:

In the Matter of the Petition of CHARLES F. BURROUGHS for Writs of *Habeas Corpus* and Certiorari.

CHARLES F. BURROUGHS, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

2 *Petition for Writs of Habeas Corpus and Certiorari.*

Filed July 14th, 1906.

In the Circuit Court of the United States for the Eastern District of Virginia.

CHARLES F. BURROUGHS, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

To the Honorable the Judges of the Circuit Court of the United States for the Eastern District of Virginia:

The Petition and Complaint of Charles F. Burroughs respectfully shows to the Court:

1.

That your petitioner is a citizen of the United States, and is a citizen and resident of the Eastern District of Virginia. and is unlawfully imprisoned and restrained of his liberty by Morgan Treat, United States Marshal for the Eastern District of Virginia, in the City of Richmond, and County of Henrico, in said District. That your petitioner is held by said Marshal under color and claim of authority of the United States, by virtue of a warrant for removal claimed to have been issued under section 1014 of the Revised Statutes of the United States, dated July 14th, 1906, signed by the Honorable Edmund Waddill, Jr., Judge of the District Court of the United States for the Eastern District of Virginia, and has been committed and is detained only under and by virtue of said warrant, and not by virtue of any judg-
3 ment, decree or final order of any court.

2.

On the 14th day of July, 1906, at the said City of Richmond, in said District, complaint in writing signed and sworn to by Morgan Treat, United States Marshal in and for said District, a copy of which is hereto attached, marked "Exhibit A," and made part hereof, was presented to the Honorable Edmund Waddill, Jr.,

Judge of the District Court of the United States for the said District, in and by which it was averred that he, the said Morgan Treat, United States Marshal, had good cause to believe and did believe that your petitioner has been indicted by the grand jury of the Circuit Court of the United States in and for the Middle District of Tennessee, for that your petitioner on the 8th day of July, 1903, and during the period of time from that date until and on the first day of September, 1905, and being during said period Vice-President of the F. S. Royster Guano Company, a corporation existing under the laws of the State of Virginia, did, in said Middle District of Tennessee, unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section 1 of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and that on the 8th day of July, 1903, at and within the County of Davidson in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, your petitioner did unlawfully conspire with divers other persons and corporations to commit an offense against the United States, to-wit: The offense of engaging in a combination in restraint of trade and commerce among the several States of the United States, all as more fully set out in an indictment filed in the said Circuit Court of the United States in and for the Middle District of Tennessee on May 25th, 1906, a certi-

4 fied copy of which indictment said complaint states was thereto attached and made a part of said complaint, and in and by which said complaint, said complainant did, therefore, charge that your petitioner did commit the said offense against the United States in the manner and form as set forth in said indictment, and did furthermore aver in said complaint upon information and belief, that in pursuance of an order of the said Circuit Court of the United States for the Middle District of Tennessee, a Bench Warrant had been issued from said Court for the arrest of your petitioner and delivered to the Marshal of the said Court, who, after due search, had returned said warrant "Not found" in said Middle District of Tennessee and that your petitioner is now believed to be within the Eastern District of Virginia, of which District he is a resident.

And said complainant, said Morgan Treat, United States Marshal, in and by said complaint did therefore pray that your petitioner might be arrested, imprisoned, and removed or bailed, as the case might be, for trial before said Circuit Court of the United States for the Middle District of Tennessee, and further dealt with according to law; all of which will appear from the said complaint, a copy of which is hereto attached as aforesaid, reference thereto being hereby made for greater certainty. And that thereupon, to-wit, on the said 14th day of July, 1906, a warrant for his arrest was issued by the Honorable Edmund Waddill, Jr., Judge as aforesaid, upon the aforesaid complaint, which came to the hands of the said Morgan Treat, Marshal as aforesaid, and he, in obedience thereto, arrested your petitioner and brought him before

the said the Honorable Edmund Waddill, Jr., Judge as aforesaid, and made return of said warrant, endorsed thereon, and a copy of said warrant with the endorsement thereon is hereto attached marked "Exhibit B" and made a part hereof.

3.

That thereupon then and there, the United States Attorney in and for the said Eastern District of Virginia, for and on behalf of the United States, did offer and introduce in evidence to and before the said Judge, in support of the averments of the said complaint of said Morgan Treat, United States Marshal, a certified copy of the said indictment mentioned and referred to in the said complaint. A certified copy of said indictment so offered and introduced in evidence is hereto attached, marked "Exhibit C," and made a part hereof, and the identity of your petitioner with and as the said Charles F. Burroughs mentioned and referred to in said indicement as one of the defendants therein, having been then and there admitted by your petitioner, the Government, the United States of America, introduced or offered no other or further proof or evidence in support of the said complaint or of the averments therein, but rested its case upon the said hearing of the said complaint before the said Judge.

4.

That thereupon, then and there, your petitioner, by his counsel, proceeded to offer, and offered, proof and evidence by witnesses then and there present to show that your petitioner did not within the said Middle District of Tennessee, on the 8th day of July, 1903, or during the period between the 8th day of July, 1903 and the 1st day of September, 1905, or at any other time, engage in the said alleged conspiracies in the said indictment mentioned, or any or either of them, join in or assent to the said alleged conspiracies, engaged in or entered upon in said Middle District of Tennessee, or any or either of them, or at any time or at any place do any act in furtherance of, or to effect the object of said alleged conspiracies engaged in in said Middle District of Tennessee, or any or either of them. Thereupon, then and there, the counsel for the Government, upon the said hearing, did object to the introduction on the behalf of your petitioner of the said evidence or any evidence or proof tending to contradict or controvert the respective averments, or any or either of them in the said indictment and in the respective counts thereof, viz., that your petitioner did engage in the said alleged conspiracy in said indictment mentioned and referred to, in the said Middle District of Tennessee, in manner and form as in the said indictment in that behalf aver-ed, or to contradict or controvert or disprove any of the averments in the said indictment contained,—on the ground, then and there stated, that upon the said hearing of said complaint, the said certified copy of the said indictment was conclusive evidence of every fact therein aver-ed to sustain and prove upon the said hearing the said complaint of the said Morgain Treat, United States Marshal, and the averments thereof, and the probable cause of the commis-

sion by your petitioner of the said supposed offenses in the said indictment mentioned and of any and every of them in the manner and form as in the said indictment aver-ed, and in that behalf, your petitioner then and there took the witness stand and demanded to be sworn as a witness in his own behalf, but the counsel for the Government objected, and the objection was by said Judge sustained and he was not permitted to be sworn or to testify.

5.

That thereupon, then and there, your petitioner by his counsel stated to the Judge that he would prove, and then and there his said counsel offered to prove by your petitioner as a witness and by other witnesses then and there present the following facts, which facts are true, that is to say: That the said Charles F. Burroughs has not been within the State of Tennessee for the period of seven years next preceding the 10th day of July, 1906, and neither has he through himself or through any agent, nor has any firm or corporation in which the said Burroughs is interested ever done any business
7 of any kind in the State of Tennessee within seven years next preceding said 14th day of July, 1906, except to purchase phosphate rock from the owners of mines in Tennessee, and that he has never at any time made, entered into or engaged in any of the conspiracies mentioned in said indictment or any other conspiracy within the Middle District of Tennessee, nor did he by or through any agent or agents, attorney or attorneys do or attempt to do within the said Middle District of Tennessee any of the matters and things alleged and aver-ed in said indictment to have been done by him and the other defendants named therein, nor did he personally or by or through any agent or attorney join in or assent to said alleged conspiracies or any of them in the Middle District of Tennessee or at any time or any place do any act in furtherance thereof or to effect the objects of said alleged conspiracies or any of them in the Middle District of Tennessee.

6.

That the United States Attorney, on behalf of the Government, then and there objected to the introduction or reception by the said Judge of the said evidence so offered on behalf of your petitioner, and to each and every part thereof, on the ground hereinbefore stated, which objection was then and there sustained by the Court, on the ground that the said certified copy of the said indictment so introduced on behalf of the Government, the identity of your petitioner as aforesaid being admitted by your petitioner as aforesaid, was conclusive evidence of the existence of every fact stated in the indictment, including the averments that the conspiracies alleged in the said indictment were engaged in in the Middle District of Tennessee, and that therefore said evidence or any evidence offered by and on behalf of your petitioner to controvert, contradict or disprove the averments of the said indictment in that behalf, or any or either of them, was incompetent and inadmis-

sible; and the said Judge, then and there, on the grounds
8 aforesaid, excluded and refused to receive said evidence so offered on behalf of your petitioner, or any part thereof, to which ruling of the Judge, your petitioner then and there, by his counsel, duly excepted.

7.

That thereupon the said Judge, upon the complaint and upon the evidence so introduced for and on behalf of the Government as aforesaid, made and signed a certain order reciting his said rulings as aforesaid and ordering as in said order appears, which said order is as follows:

THE UNITED STATES OF AMERICA,
Eastern District of Virginia:

THE UNITED STATES
vs.
CHARLES F. BURROUGHS.

This is an application under the provisions of section 1014 of the United States Revised Statutes for a warrant for the removal of Charles F. Burroughs to the Middle District of Tennessee and comes before me as follows:

The District Attorney for this District, together with Mr. E. T. Sanford, Counsel for the United States, presented to me, a verified complaint of Morgan Treat, United States Marshal for this District, with the certified copy of an indictment filed on May 25th, 1906, in the Circuit Court of the United States for the Middle District of Tennessee in the case of the United States *vs.* Virginia-Carolina Chemical Company and other defendants, including among such defendants the said Charles F. Burroughs.

Said complaint and copy of said indictment are made parts of this order.

Upon the exhibition of this indictment and affidavit and
9 the *ex parte* motion of the counsel for the United States, I made an order for the arrest of said Charles F. Burroughs and his production before me.

This order was duly executed by the said Marshal, who arrested the said Charles F. Burroughs and brought him before me in Richmond on this 14th day of July, 1906, as shown by his return. When the accused was so brought before me it was moved by the Counsel for the United States that inasmuch as the indictment charged offenses against the United States triable in the Circuit Court of said United States for the Middle District of Tennessee, and the identity of the defendant was admitted, that an order be forthwith made for the commitment of said Charles F. Burroughs for trial before said Circuit Court.

This motion was made upon the certified copy of the indictment without any further testimony, the identity of the party arrested and brought before me as the said Charles F. Burroughs mentioned in the indictment being admitted.

And thereupon the defendant, Charles F. Burroughs, offered himself as a witness in his own behalf, and being about to be sworn, the United States, by its Counsel, thereupon objected to the witness being sworn, or to any testimony being given in rebuttal of the indictment in these proceedings, on the ground that the identity of the defendant being admitted, inasmuch as the indictment on its face charges offenses against the United States committed and triable in the jurisdiction in which the defendant stands indicted, no evidence is admissible here to impeach the indictment, and the order of commitment should be made without other proof.

The defendant's counsel thereupon offered to prove by the defendant, and other witnesses then and there present, that the Circuit Court for the Middle District of Tennessee had no jurisdiction over the person of said defendant touching the offense charged in
10 said indictment, in that defendant and said other witnesses would, if permitted, testify that said Charles F. Burroughs has not been within the States of Tennessee for the period of seven years next preceding the 14th day of July, 1906, and neither has he through himself or through any agent nor has any firm or corporation in which the said Burroughs is interested ever done any business of any kind in the State of Tennessee within seven years next preceding said 14th day of July, 1906, except to purchase phosphate rock from the owners of mines in Tennessee and that he has never at any time made entered into or engaged in any of the conspiracies mentioned in the said indictment or any other conspiracy within the Middle District of Tennessee, nor did he by or through any agent or agents, attorney or attorneys do or attempt to do within the said Middle District of Tennessee any of the matters and things alleged and aver-ed in said indictment to have been done by him and the other defendants named therein, nor did he personally or by or through any agent or attorney join in or assent to said alleged conspiracies or any of them in the Middle District of Tennessee, or at any time or at any place do any act in furtherance thereof or to effect the objects of said alleged conspiracies or any of them in the Middle District of Tennessee. Nor has defendant done, or performed, or been engaged in, or a party to the same, or any of them in any other place or places at any other time or times whatsoever in the said District.

Thereupon Counsel for the Government renewed its objections as aforesaid.

After hearing counsel on both sides the Court announced its conclusions as follows:—

"The conclusion reached by the Court is that in a proceeding for the arrest and the removal of persons charged with a violation of the laws of the United States pursuant to section 1014 of the
11 Revised Statutes of the United States, before a United States District Judge, sitting in the State of Virginia, in which State there no longer exists the right of a preliminary examination upon a crime charged prior to the trial upon the merits, when said Judge is called upon to act as well in the matter of the apprehension

of such persons, as in their removal to the jurisdiction in which they have been indicted, that upon the Government's presentation of a sufficient indictment regularly found by a grand jury in a court of the United States, properly charging the commission of an offense within the district in which such indictment is found, coupled with proof of the identity of the person indicted, it is its duty to properly bail such person for appearance before the court in which he is indicted, or cause him to be removed thereto."

Therefore it was ordered that the testimony offered is inadmissible, and will not be received, and I therefore made the following order:

UNITED STATES OF AMERICA, *Eastern District of Virginia, set:*

The within named Charles F. Burroughs having been brought before me, and identified; and it appearing by a duly authenticated copy of an indictment that he stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," for violation of section one of the act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States, it is ordered that the said Charles F. Burroughs give bail in the sum of five thousand dollars with one or more sufficient
12 sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial before said Court under the said indictment; or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee, to be there dealt with according to law.

Richmond, Va., July 14th, 1906.

(Signed) EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

And after said order had been made and the defendant declined to give bond, the Counsel for the United States moved that the warrant do issue directed to the Marshal of this District for the imprisonment and removal of the said Charles F. Burroughs to the Middle District of Tennessee, and his delivery to the custody of the United States Marshal of that District.

On such motion counsel for the said Charles F. Burroughs objected and again offered the said Charles F. Burroughs as a witness, together with the other witnesses here-before referred to, to establish the same matters and facts as herein before stated with regard to the objection to the order for the commitment of the said Charles F. Burroughs, which testimony was again offered and was again objected to by the counsel for the United States on the same grounds above set forth, and on the further ground that these matters could not now be inquired of in this stage of the proceedings, and was again excluded by the Court, to all of which counsel for the said Charles F. Burroughs duly excepted and had the exceptions noted and entered.

(Signed) EDMUND WADDILL, JR., *Judge.*

I therefore issued a warrant directed to the Marshal as follows:

13 *Warrant of Imprisonment and Removal.*

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The President of the United States to the United States Marshal of the Eastern District of Virginia, Greeting:

Whereas it has been made to appear that Charles F. Borroughs stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled: "The United States *vs.* Virginia-Carolina Chemical Company *et al.,*" for violation of section one of the act of Congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States; and whereas the said Charles F. Borroughs having been brought before me, and identified; and a certified copy of said indictment furnishing probable cause to believe him guilty as therein charged, and whereas it was thereupon ordered by me that said defendant give bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial under said indictment, or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee to be there dealt with according to law; and the said defendant having failed and refused to give bail as required, therefore;

You are hereby commanded in the name and by the authority of the said United States to imprison the said Charles F. Burroughs in accordance with law, and that with all convenient speed you remove him hence to the said Middle District of Tennessee and there surrender him to the Marshal of that District, there to be dealt
14 with according to law.

Richmond, Va., July 14th, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

Richmond, Va., July 14th, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

8.

Your petitioner further says that he is advised, and he charges and submits, that under and by virtue of Clause 3, of Section 2, of Article 3, of the Constitution of the United States, and of the Sixth Amendment to *to* the said Constitution, your petitioner is entitled to be tried and can only be indicted and tried for any alleged offenses against the laws of the United States, in the State and District in which the offense, which the indictment charges, was committed; that the said supposed offenses in the said indictment mentioned and charged, were not, nor was any or either of

them, committed in the said Middle District of Tennessee; that none of the alleged acts, transactions, matters or things which are in the said indictment mentioned or referred to as being and constituting the supposed engaging by this defendant in the said alleged conspiracies in the said indictment referred to, or any or either of them, were done or held or took place within the said Middle District of Tennessee, and no alleged act, transaction, matter or thing, in the said indictment mentioned or referred to as being the doing by this defendant of an act to effect the object of said conspiracy was done or held or took place within the Middle District of Tennessee; that he has not been within the State of Tennessee for the period of seven years next preceding the 14th day of July, 1906, and neither has he through himself or through any agent, nor has any firm or corporation in which the said Borroughs is interested, ever done any business of any kind in the State of Tennessee within seven years next preceding said 14th day of July, 1906, except to purchase phosphate rock from the owners of mines in Tennessee and that he has never at any time made, entered into or engaged in any of the conspiracies mentioned in the said indictment or any other conspiracy within the Middle District of Tennessee, nor did he by or through any agent or agents, attorney or attorneys, do or attempt to do within the said Middle District of Tennessee any of the matters and things alleged and aver-ed in said indictment to have been done by him and the other defendants named therein, nor did he personally or by or through any agent or attorney join in or assent to said alleged conspiracies or any of them in the Middle District of Tennessee, or at any time or any place do any act in furtherance thereof, or to effect the objects of said alleged conspiracies or any of them in the Middle District of Tennessee; that he did not do in said District any act in pursuance of the said alleged conspiracies in the said indictment mentioned, or any or either of them, in furtherance of the said alleged conspiracies in said indictment mentioned, or any or either of them, or to effect the object of the same, or as an act on the part of your petitioner of engaging in the same.

15

9.

That thereupon, the United States Attorney moved the commitment of your petitioner to the Marshal of the said District for removal to the Middle District of Tennessee for trial upon the indictment in the United States Circuit Court for said District, and the said Attorney for the United States thereupon made a motion before the Honorable Edmund Waddill, Jr., Judge, for the issuance of a warrant for the removal of your petitioner to the Middle District of Tennessee for trial as aforesaid in the United States Circuit Court for said District upon the said indictment, and the said motion was allowed, and said warrant was in pursuance thereof issued by the said Judge, and a copy thereof is embraced in the order of the said Judge hereinbefore recited as and made a part hereof. That thereupon the said Marshal of the Eastern District of Virginia, to whom the said warrant was directed, took your petitioner

16

into custody upon the said warrant and now holds your petitioner thereunder and threatens to take and remove your petitioner to the Middle District of Tennessee, as directed by the said warrant and will do so, unless your Honor shall issue the writ of *Habeas Corpus* herein prayed for. Your petitioner further says that in case your petitioner is removed under the said warrant to the said Middle District of Tennessee for trial upon said indictment and is there held for trial and tried upon said indictment, your petitioner will not be tried within the District in which the said alleged offenses charged in the said indictment were committed, as required by the Sixth Amendment to the Constitution of the United States, and by Clause 3, of Section 2, of Article 3 of said Constitution, and will be tried in violation of his rights under said provisions of the said Constitution. Your petitioner further says that he is advised, and he charges, that the said indictment does not charge the commission by your petitioner of any offense against the laws of the United States, and that same is in that behalf insufficient and void.

10.

That the imprisonment and detention of your petitioner is without authority of law, and the said proceedings before said United States District Judge are illegal and the said warrant of removal was illegally issued and in violation of Article 3, Section 2, of the Federal Constitution, and of the Sixth Amendment to the said Constitution; and that then and there by the said rulings of the said District Judge, in the exclusion of the said evidence and in
17 holding that the said certified copy of the indictment was conclusive evidence as aforesaid, and in refusing to permit your petitioner to introduce any evidence on his behalf, as aforesaid, your petitioner was deprived of rights secured to him by the said provisions of the said Constitution and by section 1014 of the Revised Statutes, and was and is by said Morgan Treat, United States Marshal, deprived of his liberty without due process of law.

Wherefore your petitioner prays that a writ of *Habeas Corpus* be issued, directed to the said United States Marshal of the Eastern District of Virginia, who has your petitioner in custody, demanding him to bring the body of your petitioner before this Court forthwith; and further that a writ of *Certiorari* be directed to the said Honorable Edmund Waddill, Jr., Judge as aforesaid, commanding that he return all proceedings against this petitioner to this court forthwith, for such action as may be proper in the premises.

CHARLES F. BURROUGHS.

18 UNITED STATES OF AMERICA,
Eastern District of Virginia, City of Richmond, ss:

Charles F. Burroughs being duly sworn, deposes and says that he has read the foregoing petition, and knows the contents thereof, and that the same is in all respects true.

CHARLES F. BURROUGHS.

Sworn and subscribed to before me this 14th day of July, 1906.

JOSEPH P. BRADY,
Clerk U. S. Circuit Court.

CADWALLADER J. COLLINS,
W. L. WILLIAMS,
Attorneys for Petitioner.
JOHN J. VERTRESS,
JAMES C. BRADFORD,
Counsel.

19 EXHIBIT A.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

On this 14th day of July, A. D. 1906, at the City of Richmond, in the said District, before the Honorable Edmund Waddill, Jr., Judge of the District Court of the United States of America for the said District, comes Morgan Treat, United States Marshal in and for the said District, and upon his oath complains and says: that he has good cause to believe and does firmly believe that Charles F. Burroughs of Norfolk, Virginia, stands indicted by the grand jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said Charles F. Burroughs on the eighth day of July in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, being during said period Vice-President of the F. S. Royster Guano Company, a corporation existing under and by the laws of the State of Virginia, did in the said Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said Charles F. Burroughs did unlawfully conspire with divers other persons and corporations to commit an offense against the United States, to-wit, the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States, all as more fully set out in an indictment filed in the said Circuit Court of the United States in and for the Middle District of Tennessee on May 25,
20 1906, in cause No. 963, entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al,*" a certified copy of which indictment is hereto attached and made a part of this complaint; and complainant therefore charges that the said Charles F. Burroughs did commit the said offenses against the United States in manner and form as set forth in said indictment.

Complainant furthermore avers upon information and belief that in pursuance of an order of said Circuit Court of the United States for the Middle District of Tennessee a bench warrant has been issued from said Court for the arrest of said Charles F. Burroughs and delivered to the Marshal of said Court, who, after due search, has returned said warrant "not found" in said Middle District of Tennessee; and that said Charles F. Burroughs is now believed to be

within the Eastern District of Virginia, of which district he is a resident.

Wherefore this complainant prays that the said Charles F. Burroughs may be arrested and imprisoned and removed or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee, and further dealt with according to law.

(Signed) MORGAN TREAT, *Marshal.*

Subscribed and sworn to before me by the above named Morgan Treat the day and year first above written.

EDMUND WADDILL, JR., *U. S. Judge.*

21 EXHIBIT B.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

To the Marshal of the Eastern District of Virginia, Greeting:

Whereas complaint in writing on oath, has been made to me charging that Charles F. Burroughs of Norfolk, Virginia, stands indicted by the grand jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said Charles F. Burroughs, on the eighth day of July, in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, did in the Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said Charles F. Burroughs did unlawfully conspire with divers other persons and corporations to commit an offense against the United States, to-wit, the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States; and application has been made to me that the said Charles F. Burroughs may be arrested and imprisoned and removed or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee;

Now, therefore, you are hereby commanded to arrest the said Charles F. Burroughs if he be found within your said District, and bring him forthwith before me at my Chambers in Richmond, in order that he may be dealt with according to law.

(Signed) EDMUND WADDILL, JR.,
District Judge.

Richmond, July 14th, 1906.

22 Pursuant to the within writ I have taken the defendant Charles F. Burroughs into custody and now have him before Hon. Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia. MORGAN TREAT,
United States Marshal.

July 14th, 1906.

23 EXHIBIT C.

In the Circuit Court of the United States of America for the Middle District of Tennessee, of the April Term, in the Year of Our Lord Nineteen Hundred and Six.

MIDDLE DISTRICT OF TENNESSEE, *sct:*

The grand jurors for the United States of America, inquiring for the Middle District of Tennessee, upon their oath present, that before and on the eighth day of July, in the year of our Lord nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year of our Lord nineteen hundred and five, the following named corporations, respectively organized and existing under and authorized by the laws of the several States and of the foreign country here named in connection with them, and hereafter in this indictment called corporation defendants, to wit, the Virginia-Carolina Chemical Company, of New Jersey, Armour and Company, of Illinois, the Acme Manufacturing Company, of North Carolina, the Alabama Chemical Company, of New Jersey, the Anderson Phosphate & Oil Company, of South Carolina, the Ashepoo Fertilizer Company, of South Carolina, the Blackshear Manufacturing Company, of Georgia, the Etiwan Fertilizer Company, of South Carolina, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, The Furman Farm Improvement Company, of Georgia, the Goulding Fertilizer Company, Limited, of Great Britain and Ireland, The Goulding Fertilizer Company, of Florida, the Gulfport Cotton Oil, Fertilizer & Manufacturing Company, of Georgia, the Home Mixture Guano Company, of Georgia, the Jackson Fertilizer Company, of Mississippi, the Marietta Fertilizer Company, of Georgia, the Meridian Fertilizer Factory, of Mississippi, the National Fertilizer Company, of Tennessee, the New Orleans Acid and Fertilizer Company, of New Jersey, the Old Dominion Guano Company, of Georgia, the Planters Chemical Company, of Alabama, the
24 Read Phosphate Company, of West Virginia, the F. S. Royster Guano Company, of Virginia, the Savannah Guano Company, of Georgia, the Southern States Phosphate and Fertilizer Company, of Georgia, the Standard Chemical & Oil Company, of Alabama, the Standard Guano and Chemical Manufacturing Company, of Louisiana, Swift & Company, of Illinois, the Tennessee Chemical Company, of Tennessee, and the Tennessee Valley Fertilizer Company, of Alabama, and certain firms, to wit, the firm of A. D. Adair and McCarty Brothers and the firm of Wilcox, Ives & Company, did carry on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereafter in this indictment called the States of the conspiracy, as wholesale dealers in complete and alkaline fertilizers and in acid phosphates, nitrates, and potash salts suitable for fertilizers, which then were useful and valuable

articles of merchandise, indispensable for use on the soil of the said States of the conspiracy in order that the staple crops of those States might be raised therefrom; that the following named persons, hereafter in this indictment called individual defendants, to wit, Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, of the said Virginia-Carolina Chemical Company, and J. Rice Smith, agent and manager of the said Virginia-Carolina Chemical Company, and president of the Georgia Chemical Works hereinafter mentioned, Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, Fred G. Brown, president and treasurer of the said Anderson Phosphate & Oil Company, Frank Burbidge, president, and William J. McCormack, treasurer, of the said Etiwan Fertilizer Company, George Braden, president of the said Federal Chemical Company, of Delaware, and also of the said Federal Chemical Company, of Kentucky, Augustus D. Adair and James D. McCarty, officers and agents of the said Furman Farm Improvement Company and members of the said firm of A. D. Adair and McCarty Brothers, William DeC. Kessler, secretary and treasurer of the said Goulding Fertilizer Company, Limited, James G. Tinsley, president of the said Marietta Fertilizer Company and vice-president of the said Tennessee Chemical Company, William D. Rhea, general manager of the said National Fertilizer Company, William L. Peel, president of the said Old Dominion Guano Company, Abram C. Read, vice-president and general manager, and Isaac Mayo Read, agent, of the said Read Phosphate Company, Frank S. Royster, president, and Charles F. Burroughs, vice-president, of the said F. S. Royster Guano Company, A. J. Ives, whose Christian name is to the said grand jurors unknown, secretary and treasurer of the said Savannah Guano Company and a member of the said firm of Wilcox, Ives & Company, T. Porter Fleming, vice-president of the said Southern States Phosphate and Fertilizer Company, and T. Garland Tinsley, president and treasurer of the said Tennessee Chemical Company, in their said several capacities as officers, managers, agents, and attorneys of the said corporation defendants and members of the said firms, and on behalf of those corporations and firms, during the period of time in this indictment first aforesaid, did carry on the business aforesaid; that in so carrying on the said business the said defendants, that is to say, the said corporation and individual defendants, did sell and deliver large quantities of the said merchandise within the limits of the said States of the conspiracy from the respective places of business of the said corporation defendants and the said firms, located at different points within those States, to retail dealers in and consumers of such merchandise, in such States respectively, and did also ship large quanti-es of the same from their respective places of business, located in the said States of the conspiracy and also in the States of Virginia, Illinois, and Kentucky, into and through other of the said States than those in which their said places of business were located; that in so carrying on the said busi-

ness and shipping the said merchandise from one of the said States into and through another or others thereof, the said defendants, during the period aforesaid, were engaged in trade and commerce among the States of this Union within the meaning of the Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in so carrying on the said business, trade and commerce, the said Virginia-Carolina Chemical Company and the said Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, and J. Rice Smith, agent and manager, of the said Virginia-Carolina Chemical Company, did make use of and operate a portion of their said business, trade and commerce through each of certain other corporations, to wit, the American Fertilizer Company, of Virginia, the Birmingham Fertilizer Company, of Alabama, the Coweta Fertilizer Company, of Georgia, the Georgia Chemical Works, of Georgia, the Navassa Guano Company, of North Carolina, of either the whole or a majority of the capital stock of which said corporations respectively the said Virginia-Carolina Chemical Company was the owner;

26 that in so carrying on the said business, trade and commerce, the said Armour and Company and the said Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, did make use of and operate all of their said business, trade and commerce through a certain other corporation called the Tuscarora Fertilizer Company, of New Jersey, and a certain trade name, to wit, the trade name of Armour Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Furman Farm Improvement Company and the said firm of A. D. Adair and McCarty Brothers did make use of and operate a portion of their said business trade, and commerce under the trade name of Chickamauga Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Federal Chemical Company, of Delaware, and the said Federal Chemical Company of Kentucky, did make use of, and operate a portion of their said business, trade and commerce through, the names of Century Phosphate Company, Fox Chemical Company, Branch Globe Fertilizer Company, Branch and Tennessee Phosphate Company; that in so carrying on the said business, trade and commerce, the said National Fertilizer Company did make use of, and operate a portion of its said business, trade and commerce through, the corporate name of American Guano Company and the trade name of Nashville Guano Company; that in so carrying on the said business, trade and commerce, the said Read Phosphate Company did make use of, and operate a portion of its said business, trade and commerce through the corporate name of Empire Guano Company; that in so carrying on the said business, trade and commerce, the said F. S. Royster Guano Company did make use of, and operate a portion of its said business, trade and commerce through the trade name of Atlantic Chemical Company and the corporate name of Columbia Guano Company; that in so carrying on the said business, trade and

commerce, the said Swift and Company did make use of, and operate the whole of its said business, trade and commerce through, the trade name of Swift Fertilizer Works; and that in so carrying on the said business, trade and commerce, the said Tennessee Chemical Company did make use of, and operate a portion of its said business, trade and commerce through, the trade name of Continental Fertilizer Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that of the total volume of such business, trade and commerce then so being carried on by the said defendants and their competitors, the said defendants together had and controlled the principal part, that is to say, ninety per centum thereof; and
27 that because the said corporation defendants and the said firms were in fact separate and distinct from each other, they should have conducted their interstate trade and commerce strictly in competition with each other, during the said period, and then would have so conducted the same but for the unlawful conspiracy in restraint of the said business, trade and commerce in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, at and within the said Middle District of Tennessee, in violation of the provisions of said section one of the said Act of Congress, unlawfully did knowingly engage in a conspiracy in restraint of the said business, trade and commerce, so then being carried on by them in the manner aforesaid, whereby the said business, trade and commerce was restrained in the several ways and by the several means now here set forth and described, that is to say:

Competition as to the prices at which the said merchandise was sold and delivered by the said corporation defendants and the said firms in the said States of the conspiracy, which before the period of time in this indictment first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was prevented and destroyed by the said defendant from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them styled "current, reasonable market prices," for the said merchandise so sold and delivered by the said corporation defendants and the said firms in those States, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so fixed and caused to be fixed; which said uniform and non-competitive prices were prices greatly in excess of the prices which but for the said unlawful conspiracy would at such times have prevailed for the said merchandise in the said business, trade and commerce, and were prices therefore unreasonable, and were a tax on the people of the said States of the said conspiracy amounting to a large sum of money, to wit, four million dollars, annually during the continuance of the same.

For and on account of such quantity of the said merchandise as was sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts allotted and caused

to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and
28 delivered in excess, was, by the corporation defendants and firms so selling and delivering the same, paid into a common fund, held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, compensated, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as sold and delivered less than the amounts so allotted to them respectively, so it was not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy that each of the said corporation defendants and of the said firms also paid into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment to be the absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm, in disposing of its said allotment in carrying on the said business, trade and commerce, on its part faithfully should exercise every reasonable effort and due business diligence to maintain the prices so fixed and caused to be fixed as aforesaid and pay into the said fund the sum accruing to the same on account of its said excess sales, in which case an equal amount was returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also made uniform and non-competitive as between all of the said corporation defendants and the said firms, in the said business, trade and commerce, among the said States of the conspiracy.

As a convenient intermediary and common agent between the said corporation defendants and the said firms, respectively and as a means of securing their co-operation in carrying out the said unlawful conspiracy, the said defendants made use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company, Limited, was also allowed and required to collect, hold, use and distribute the said fund
29 arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that, in pursuance of the said unlawful conspiracy,

and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of September, in the year nineteen hundred and three, during the period of time aforesaid, at and within the City of New York, in the State of New York, unlawfully did knowingly deposit with the Continental Trust Company, of the said City of New York, the sum of twenty-six thousand dollars, in connection with the purchase of by the said trust company on behalf of the said Virginia-Carolina Chemical Company, and in the name of one Montrose Stuart, a clerk in the office of the said trust company, of twenty-six hundred shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Samuel T. Morgan, on the seventh day of October, in the same year nineteen hundred and three, and during the period of time aforesaid, at and within the said city of New York, in the State of New York, unlawfully did deliver to the said William DeC. Kessler, Vice-President of the said Colonial Development Company, Limited, three checks drawn by the said Virginia-Carolina Chemical Company, one upon the National City Bank, of New York City aforesaid, for eighty thousand dollars, another on the Bank of America, of New York City aforesaid, for fifty thousand dollars, and the other on the National Park Bank, of New York City aforesaid, for thirty-five thousand and four hundred and sixty-eight dollars, aggregating one hundred and sixty-five thousand and four hundred and sixty-eight dollars, as and for a payment, by the said Virginia-Carolina Chemical Company, to the said Colonial Development Company, Limited, of twenty cents a ton on its allotment under the said unlawful conspiracy; he the said Samuel T. Morgan, when and where he so as aforesaid delivered the said checks to the said William DeC. Kessler, well knowing the character and purpose of the same, and well knowing that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as acts on their parts respectively of engaging in the same, the said Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, on the seventeenth day of September, in the year nineteen hundred and three, and during the period aforesaid, at the said City of New York, in the said State of New York, unlawfully did meet together to discuss and further the object of the said unlawful conspiracy; they the said Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred G. Brown,

Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, when and where they so as aforesaid met together, each well knowing the character and purpose of the said meeting, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank E. Wilcox, on the first day of November, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did deliver to one W. W. Perkins, Secretary of the said American Fertilizing Company, a certain document, too voluminous to be here set forth, stating certain prices and terms of sale, fixed in pursuance of the said unlawful conspiracy, for the said fetilizer merchandise, in the States of North Carolina, South Carolina, Georgia, Florida, Alabama and Tennessee, for the spring season of the year nineteen hundred and four; he the said Frank E. Wilcox at the time and place when and where he so as aforesaid delivered the said document to the said W. W. Perkins, well knowing the character of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, and during the period of time aforesaid, at the town of Decherd, in the said Middle District of Tennessee, by and through one
31 F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, and during the period aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, and during the period of time aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at the City of Nashville, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, a certain notice of shipment, partly written and partly printed, in the words and figures following, that is to say:

"The Armour Fertilizer Works
Owned and operated by
Armour & Company.

Prudential Building,
Atlanta, Ga.

Duplicate.
To be Mailed with Bill of
Lading to Customer.

No. 612
March 10", 1905.

32 We have this day shipped from Nashville, Tenn. storage
To Bramlitt Hdw Co.
Corinth, Miss.
Charge to S. D. Bramlitt. Address same.

No. Bags.	Weight of bags.	Brand.	Tons.
400	100	King Cotton 8.2.2	20

Order No. 4613.
Bill of lading herewith. Invoice will be mailed from Chicago.
Above quantities shipped 3 10 1905. Freight Terms.....
Car No. 13619. Via L. & N.
Charges prepaid $48.00.
THE ARMOUR FERTILIZER WORKS,
Per ALEX. LESLIE."

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Austin B. Carpenter, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Assistant Secretary of the said Colonial Development Company, unlawfully did sign his name, to wit, "A. B. Carpenter, Asst. Secy." on the face of a certain stock certificate, to wit, certificate No 28, showing the ownership by one Thomas M. Green of fifty-one shares of the capital stock of the said Colonial Development Company; he the said Austin B. Carpenter, at the time and
33 place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his said act to be done in pursuance and to effect the object of the said conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles H. MacDowell, on the twelfth day of January, in the year nineteen hundred and five, and during the period of time aforesaid, at and within the city of Chicago, in the State of Illinois, unlawfully did sign his name, to-wit, "C. H. MacDowell," under the name of the Armour Fertilizer Works, and after the word "by" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Armour and Company, under the trade name of "Armour Fertilizer Works," offered to furnish and deliver at Corinth, in the State of Mississippi to one S. D. Bramlitt, twenty tons of the fertilizer merchandise aforesaid; he the said Charles H. MacDowell, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of gaging in the same, the said Alabama Chemical Company, on the the first day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the city of Wilmington, in the State of North Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of six hundred and twenty

dollars for sixty-two shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Alabama Chemical Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Montgomery, in the State of Alabama, unlawfully did knowingly deliver its certain check drawn upon the Merchants and Planters-Farley National Bank, Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of William DeC. Kessler, as payment for forty-two shares of the capital stock of the said Colonial Development Company, Limited;

34 And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Anderson Phosphate and Oil Company, on the twenty-ninth day of August, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Anderson, in the State of South Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of five hundred and eighty dollars for fifty-eight shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly buy from the Carolina Savings Bank, Charleston, South Carolina, a draft upon the Citizens National Bank, of New York City, for the payment of the sum of seven thousand nine hundred and forty-nine dollars and forty-three cents to the order of one Frank E. Taylor, Vice-President and General Manager of the said Ashepoo Fertilizer Company;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and *and* during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly cause the said Frank E. Taylor to endorse the check last above mentioned payable to the order of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Blackshear Manufacturing Company, on the seventeenth day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Blackshear, in the State of Georgia, unlawfully did knowingly deliver to the Atlantic Coast Line Railroad Company six tons of the fertilizer merchandise aforesaid, consigned and to be shipped

to the firm of E. J. Blume & Company, at Live Oak, in the State of Florida;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Etiwan Fertilizer Company, on the fourteenth day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Cairo, in the State of Georgia, by and through one P. H. Seabrook, its agent, unlawfully did knowingly offer and agree to furnish and deliver to the firm of Wight Brothers, of Cairo aforesaid, thirty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank Burbidge, on the first day of July, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Charleston, in the State of South Carolina, having then and there in his hands a certain check, dated the thirtieth day of June, in the same year nineteen hundred and four, drawn by the said Alabama Chemical Company upon the Continental National Bank of Chicago, for the payment of eleven hundred and forty-two dollars and ninety-seven cents to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Pay to order of People's National Bank, Colonial Development Co., Ltd., F. Burbidge, Pres."; he the said Frank Burbidge then and there, to wit, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William J. McCormack, on the ninth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, having then and there in his hands a certain check dated the fifth day of September, in the same year, drawn by the said New Orleans Acid & Fertilizer Company, upon the Louisiana National Bank of New Orleans, for the payment of seven hundred and fifty dollars to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Colonial Developm't Co., Frank Burbidge, Sec. & Treas., per Wm. J. McCormack"; he the said William J. McCormack, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of en-

gaging in the same, the said Federal Chemical Company, of
36 Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the said State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, and during the period of time aforesaid, at Springfield afore-
37 said, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff & Williams, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Goulding Fertilizer Company, Limited, on the twenty-fifth day of November, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the

town of Cullman, in the State of Alabama, by and through one W. E. Craig, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one John Sutterer, at Cullman aforesaid, three hundred and seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the sixth day of September, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Pensacola, in the State of Florida, having then and there in his hands a certain check, dated the fifth day of September, in the same year nineteen hundred and three, drawn by the said Alabama Chemical Company upon Merchandise Merchants and Planters-Farley National Bank of Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of W. DeC. Kessler, unlawfully did sign his name, to wit, "W. DeC. Kessler," upon the back of the said check next below the written words "Pay to the order of Colonial Development Co."; he the said William DeC. Kessler then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the back of the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the said fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Vice-President of the said Colonial Development Company, unlawfully did sign his name, to wit, "W. DeC. Kessler, V. P." on the face of the said stock certificate in the name of Thomas M. Green; he the said William DeC. Kessler, at the time and place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his act to be done in pursuance and to effect the object of
38 the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Gulfport Cotton Oil Fertilizer and Manufacturing Company, on the twenty-seventh day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-four hundred dolars for and in respect of twelve thousand tons of the fertilizer merchandise aforesaid, allotted to the said Gulfport Cotton Oil, Fertilizer and Manufacturing Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the sane, the said Home Mixture Guano Company, on a day in the year nineteen hundred and three to the said grand jurors

unknown, and during the period of time aforesaid, at and within the City of Columbus, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Jackson Fertilizer Company, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Jackson, in the State of Mississippi, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Marietta Fertilizer Company, on the twenty-first day of July, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by and through one L. W. Reeves, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one James A. Boyd, at Jonesboro aforesaid, seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said James G. Tinsley, on the
39 third day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Nashville, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley; he the said James G. Tinsley, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Meridian Fertilizer Factory, on the seventh day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Cullman, in the State of Alabama, by its agent E. L. Robbins, unlawfully did knowingly offer to furnish to C. A. Steifelmeyer one hundred and fifty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said National Fertilizer Company, on the

second day of March, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge; he the said William D. Rhea, then
40 and there, to wit, at the time and place when and where he so directed and required the said E. W. Connell to sign his name as aforesaid to the said check, well knowing the nature and contents of the said check, and that his said direction and requirement were in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid; he the said William D. Rhea then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the said document, well knowing the character of the same, and well knowing his said act to be one done in pursuance of and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said New Orleans Acid & Fertilizer Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did

knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars for seventy-five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Old Dominion Guano Company, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-six hundred and twenty dollars, for and
41 in respect of thirteen thousand one hundred tons of the fertilizer merchandise aforesaid, allotted to the said Old Dominion Guano Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William L. Peel, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did sign his name, to wit, "W. L. Peel, Prest.," to a certain check, to wit, a check drawn by the Maddox-Rucker Banking Company upon the National Park Bank, New York, for the payment of twenty-six hundred and twenty dollars to the order of the said Colonial Development Company, Limited; he the said William L. Peel, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Planters Chemical Company, on the thirtieth day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Talladega, in the State of Alabama, unlawfully did knowingly pay the said Colonial Development Company, Limited, the sum of fifty dollars for five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Read Phosphate Company, on the fifth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Hartselle, in the State of Alabama, unlawfully did knowingly offer to sell and deliver to one S. E. Stewart, at that place, forty to fifty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and

three, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too
42 voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid; he the said Abram C. Read, then and there, to wit, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved, Nashville Tenn. Dec. 6 1904," and above the word "Manager," upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof, offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid; he the said Abram C. Read then and there, to wit, at the time and place when and where he so as aforesaid signed his name to the last mentioned document, well knowing the character and contents of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said F. S. Royster Guano Company, on the thirtieth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine thousand three hundred and fourteen dollars and seventy-four cents, on account of such merchandise sold and delivered by the said F. S. Royster Guano Company in excess of its allotment under the aforesaid unlawful conspiracy;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles F. Burroughs, on the twenty-fifth day of March, in the year nineteen hundred and four,
43 and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did sign

his name, to wit, "C. F. Burroughs," under the word "countersigned" and above the words "Vice-President" upon the face of a certain document, partly written and partly printed, too voluminous to be here set forth in full, wherein and whereby the said F. S. Royster Guano Company and he the said Charles F. Burroughs, as Vice-President thereof, offered to sell to one J. W. Carter, and to deliver to him at Maxton, in the State of North Carolina, ten tons of the fertilizer merchandise aforesaid; he the said Charles F. Burroughs, at the time and place when and where he so as aforesaid signed his name to the said document, well knowing the character and contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Savannah Guano Company, on the second day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did knowingly pay to the said Frank Burbidge the sum of nine hundred and forty dollars for ninety-four shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said A. J. Ives, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did sign his name, to wit, "A. J. Ives, Secty. & Treas." to a certain check, to wit, a check drawn by the Savannah Guano Company upon the Merchants National Bank, Savannah, Georgia, for the payment of three thousand one hundred and forty dollars to the order of New York Exchange; he the said A. J. Ives, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Southern States Phosphate and Fertilizer Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of the time afore-
44 said, at and within the City of Augusta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine hundred and sixty dollars for ninety-six shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Chemical and Oil Company, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the

town of Troy, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand dollars for and in respect of one-half of forty thousand tons of the fertilizer merchandise aforesaid allotted to the said Standard Chemical and Oil Company, as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Guano and Chemical Manufacturing Company, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand seven hundred and seventy-four dollars and seventy-seven cents as a partial payment for and in respect of the fertilizer merchandise aforesaid, allotted to the said Standard Guano and Chemical Manufacturing Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Swift & Company, on the first day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by its agent, J. Z. Elliott, unlawfully did knowingly offer to furnish to one W. P. Diehl thirty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

And that, further in pursuance of the said unlawful con-
45 spiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes & Bro., at Oxford, Alabama, a certain letter of the tenor following, to wit:

T. G. Tinsley, Pres't & Treas. Allen Hardison, Sec'y.

Tennessee Chemical Company, Manufacturers and Importers of Ox Fertilizers.

NASHVILLE, TENN., *May* 17–'05.

Messrs. D. P. Haynes & Bro., Oxford, Ala.

DEAR SIRS: I am in receipt of your favor of the 16th and beg to state we could not allow any discount further than the 5 % for cash

settlement. We will be glad to have you settle in cash on this basis if you desire to do so, but are sorry to state we are not in a position to offer you any further discount.

Yours truly, T. G. TINSLEY, *President;*

he the said T. Garland Tinsley then and there, to wit, at the time and place when and where he so as aforesaid caused the said letter to be written and sent as aforesaid, well knowing that the same was so written and sent in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part in engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Company, James G. Tinsley. By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee
46 Chemical Company upon the Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley; he the said T. Garland Tinsley, at the same time and place when and where he so as aforesaid wrote the said endorsement on the back of the said check, well knowing the contents of the same, and that his said act was done in pursuance of and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Valley Fertilizer Company, on the second day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Florence, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars, as a partial payment for and in respect of fertilizer merchandise, aforesaid, allotted to the said Tennessee Valley Fertilizer Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on their parts respectively, of engaging in the same, the said Frank Burbidge, Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson, during the period of time aforesaid, at the City of New York, in the State of New York, the City of Washington, in the District of Columbia, Old Point Comfort and Hot Springs, in the State of Virginia, St. Augustine, in the State of Florida, and French Lick Springs, in the State of Indiana, unlawfully did as officers, directors and attorney of the said Colonial Development Company, Limited,

meet together for the purpose of discussing and attending to the affairs of the said Colonial Development Company, Limited; they the said Frank Burbidge, Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson when and where they so met together aforesaid, well knowing the purpose of such meetings, and well knowing their acts in the premises to be acts in pursuance and to effect the object of the said unlawful conspiracy, and that the same were done as acts on their parts respectively of engaging in the said unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, during the period of time aforesaid, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form aforesaid, unlawfully did engage in a conspiracy in
47 restraint of trade and commerce among the several States;
Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

SECOND COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the first count described, and were so engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord, nineteen hundred and three at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the grand jurors unknown, and engage in a conspiracy, among themselves and with such other unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid; which said unlawful conspiracy in this count mentioned then and there was a conspiracy for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described; that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the

said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing and causing to be fixed, uniform and non-competitive prices, by them to be styled "current, rea-
48 sonable market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such times prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum ther-of during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be the absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its excess

sales, in which case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of pay-
49 ment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their cooperation in carrying out the said unlawful conspiracy, the said defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, and as being acts on the part of the said corporation and individual defendants respectively of engaging in that conspiracy, are now here in this count charged to be acts by the same corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned, and to have been acts on the part of the said corporation and individual defendants respectively of engaging in the last-named unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a con-
50 spiracy in restraint of trade and commerce among the several States; against the peace and dignity of the said United

States, and contrary to the form of the statute of the same in such case made and provided.

THIRD COUNT.

And the grand jurors, aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the said first count described, and so were engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the said United States, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the said United States, to wit, the offense of engaging in a combination, among themselves and with such other unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid, which said unlawful conspiracy in this count mentioned then and there was a conspiracy to engage in a combination for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described, that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and com-
51 merce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them to be styled "current, reasonable market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be

prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such times prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful combination and ninety per centum thereof during the second year; it being a further element of the said unlawful combination in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on the said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the
52 same on account of its excess sales, in which case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their cooperation in carrying out the said unlawful combination, the said defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and

the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful combination; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, are now here in this count charged to be acts by the said corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy to commit an offense against the said United States: Against
53 the peace and dignity of the said United States; Against the peace and dignity of the said United States, and contrary to the form of the statute in such case made and provided.

Fourth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names

and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State, but by way of and partly through another State, and were severally engaged both in local com-
54 merce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the aforesaid business and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section one of the said Act of Congress, approved July 2, 1890, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, The Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company of Delaware, the Federal Chemical

Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count,
55 to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly engage in a conspiracy in restraint of commerce among the several States, to wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, whereby the said commerce was restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise which were maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the period of such unlawful conspiracy, and greatly in excess of those prices which would have otherwise prevailed in the said States during the period of such unlawful conspiracy, and were therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby earnest money was given to secure the maintenance of such prices and compensation was made to those losing volume of business by reason of maintaining such prices, that is to say:

There was from time to time allotted to each of said corporation defendants and firms an amount of tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms paid into a common fund the sum

of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sums becoming due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which faithfully maintained such uniform and non-competitive prices and failed to make sales
56 and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but sold and delivered through itself and its subsidiary companies a minimum amount thereof required as a guarantee of good faith, received from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid fell short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies made such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, as a penalty upon such excess sales, paid into such common fund like amounts per ton on the said respective kinds of fertilizers, divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means whereby said unlawful conspiracy was effected, a corporation of Ontario, Canada, whose stock was apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was the common fund aforesaid into which was paid the earnest money and penalties on excess sales aforesaid, and from which was paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which the same was operated and directed.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that within the period aforesaid of said unlawful conspiracy in this count of this indictment mentioned, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and did do and perform such acts as acts on their respective parts of engaging in the said unlawful conspiracy in this count of this indictment mentioned, and that each of such defendants at the time and place when and where such defendants did and performed the acts hereinafter so set forth in connection with such defendant respectively, then

and there well knew the character of such act and that such
57 act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, and as an act on the part of such defendant in engaging in the same, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year, nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the
58 tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chatta-
59 nooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the

County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit,
60 "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Ten-

nessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec. 6 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abraham C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P.
61 Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said corporation and individual defendants, during the period of time aforesaid, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

Fifth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the

first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and
62 through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the several States of the conspiracy and the said States of Virginia, Illinois and Kentucy, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, approved July 2, 1890, the said corporation defendants named in the said first count, to wit, the Virginia-Caro-
63 lina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, and engage in a conspiracy among themselves and with such other unknown corporations and persons, in restraint of commerce among the several States, to-wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, by which unlawful conspiracy said commerce was to be restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the

various points of delivery in the said States of the conspiracy,
64 which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy, and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices, that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to make sales and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose
65 treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary and

common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful conspiracy was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that such act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

66 In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one

Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said consiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company,
67 on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Ten-

nessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle
68 District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his, the said E. W. Connell's name as such Treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fer-

tilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read,"

after the words "Approved—Nashville, Tenn., Dec. 6 1904"
69 and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he, the said Abram C. Read as Manager thereof offer-d to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee

Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

70 SIXTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were

severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress approved July 2, 1890, and entitled "An Act to protect
71 trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and in the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section 5440 of the Revised Statutes of the United States, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William
72 J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Wil-

liam D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the United States, to wit, to engage in a combination in restraint of commerce among the several States, namely, a combination in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, and did then and there so conspire to commit the aforesaid offense by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy, and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices; that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to
73 make sales and deliveries of such merchandise through itself and its subsidiary — amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment,

as aforesaid; and on the other hand, each of said corporation defendants and firms which, through itself and its subsidiary companies, should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful combination was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid, the corporation defendants and individual defendants, hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that such act was done in pur-
74 suance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and

four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at West
75 Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid,

consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchan-
76 dise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Arndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day

and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D.
77 Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec. 6 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes

and Bro.," at Oxford, Alabama, that certain letter of the date
78 set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley, By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did conspire to commit an offense against the United States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

ABRAM M. TILLMAN,
United States Attorney.

(Endorsed as follows:) No. 963. United States Circuit Court, Middle District of Tennessee. *The United States vs. Virginia-Carolina Chemical Company et als.*

Indictment for violating Act of Congress approved July 2, 1890, and entitled "An Act to Protect Trade and Commerce against unlawful restraints and monopolies," and Section 5440 R. S. U. S.

A True Bill. Robert Q. Stewart, Foreman of the Grand Jury.

Names of Witnesses Sworn and Examined Before the Grand Jury.

J. C. Adams, Henry E. Ahern, Lee Ashcraft, Eugene Atkinson, N. E. Barker, W. F. Barrett, James C. Beck, J. M. Berry, W. W. Bird, L. W. Botts, Clarence Braden, S. D. Bramlitt, A. P. Brantley, B. D. Brantley, Dewitt Brown, H. C. Brown, Arthur Bussey,
79 Hezekiah Bussey, E. J. Blume, James A. Boyd, William F. Burns, Oscar Bright, J. W. Carter, B. G. Clark, C. W. Comes, E. W. Connell, Charles Earle Currie, R. L. Davis, Joseph Denee, W. P. Diehl, A. M. Dobbs, John V. Dobson, C. H. Drayton, W. L. Dumas, J. B. Duncan, S. Eastland, T. B. Edwards, Culpepper Exum, H. C. Fischer, J. B. Fiser, Albert French, C. A. Gambrill, A. H. George, John E. Gibbs, William Gilchrist, James M. Goldsmith, A. A. Green, E. P. Grice, W. A. Hansel, G. A. Harrington, H. J. Harby, Allen Hardison, L. C. Hayne, J. L. Haynes, D. P. Haynes, R. W. Henderson, P. W. Hendricks, E. R. Hodgson, junior, E. R. Hodgson, senior, J. L. Horn, W. E. Hudson, T. J. Hunt, R. H. John-

ston, T. V. Kessler, E. M. Kirk, Henry Kirn, H. L. Law, Alexander Leslie, J. A. Lindsey, W. Hampton Logan, Harry Luck, John A. Lewis, W. F. McKenzie, Robert F. Maddox, H. W. Malloy, E. R. Manning, H. L. Milligan, J. Allen Moore, M. B. Neece, W. J. Oliver, E. Thomas Orgain, D. B. Osborne, Every M. Paget, W. W. Perkins, Dr. J. D. Plunkett, F. B. Pope, William Price, Charles Rainey, Frederick Rayfield, Isaac W. Read, W. A. Reynolds, I. T. Rhea, W. E. Richards, H. A. Rogers, V. N. Roadstrum, W. G. Sadler, G. W. Sanders, E. M. Sentelle, W. McR. Smith, R. G. Sparrow, J. F. Stackley, C. A. Steifelmeyer, S. E. Stewart, W. B. Stratford, John Sutterer, E. R. Taber, Frank E. Taylor, W. B. Taylor, W. D. Tharin, J. R. Timmerman, J. W. Todd, S. W. Travers, George H. Tucker, E. Van Winkle, J. T. Welch, O. C. Wiley, C. H. Willcox, T. B. Williams, Benjamin L. Willingham, W. S. Wight, E. G. Woodling.

Filed 11:30 A. M., May 25, 1906. H. M. Doak, Clerk, by E. L. Doak, Deputy Clerk. Abram M. Tillman, U. S. Atty.

I, H. M. Doak, Clerk of the Circuit Court of the United States in and for the Middle District of Tennessee, hereby certify that the foregoing is a true, perfect, and complete copy of an indictment filed as thereupon endorsed, etc. In witness whereof I have hereunto signed my name and affixed the seal of said court, at my office, this the 26th day of May, 1906.

[SEAL OF COURT.] H. M. DOAK, *Clerk*.

80 *Order Awarding Writs of Habeas Corpus and Certiorari.*

Filed July 14th, 1906.

In the Matter of the Petition of CHARLES F. BURROUGHS for Writs of *Habeas Corpus* and Certiorari.

CHARLES F. BURROUGHS, Petitioner,

versus

MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

Let the writ of *habeas corpus*, in due form of law, as prayed for in the within petition be issued directed to Morgan Treat, United States Marshal for the Eastern District of Virginia, commanding him forthwith to make return of said writ and to produce the body of said petitioner, Charles F. Burroughs, before this Court, to be dealt with according to law; and that the writ of certiorari as prayed for in said petition be issued and made returnable forthwith.

Richmond, Va., July 14th, 1906.

NATHAN GOFF,

Presiding Circuit Judge, April Term, 1906.

Writ of Habeas Corpus.

81 UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

To Morgan Treat, United States Marshal for the Eastern District of Virginia, or any of his deputies:

We command you that the body of Charles F. Burroughs in your custody detained, as it is said, together with the day and cause of his caption and detention, you safely have before our Circuit Court of the United States, within and for the District aforesaid, forthwith, to do and receive all and singular those things which the said Circuit Court of the United States, within and for the District aforesaid, shall then and there consider of him in this behalf; and have you then and there this writ.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond, this 14th day of July, in the year of our Lord one thousand nine hundred and six, and of our Independence the 131st year.

[Seal United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Cerk of the Circuit Court of the United States for the Eastern District of Virginia.

Marshal's Return.

To the Circuit Court of the United States for the Eastern District of Virginia:

Morgan Treat, United States Marshal for the said Eastern District of Virginia, to whom the annexed writ is directed, has now before the court the body of Charles F. Burroughs therein named, as thereby commanded. And I certify that the cause of the detention of the said Charles F. Burroughs is a warrant directed to me and issued by the Honorable Edmund Waddill, Jr., Judge, of the said
82 Eastern District of Virginia, on July 14, 1906, under the provisions of section 1014 of the Revised Statutes of the United States, commanding the imprisonment and removal of the said Charles F. Burroughs to the Middle District of Tennessee for trial in the Circuit Court of the United States for said last mentioned district upon a certain indictment found in said last mentioned court against him, the said Charles F. Burroughs and others, a copy of which warrant of removal is set out in the petition of the said Charles F. Burroughs herein; and that a full, true and correct statement of all the proceedings before the said Judge upon the application for the arrest and commitment of the said Charles F. Burroughs and his removal to said Middle District of Tennessee for trial is contained and set forth in the statement or order of said Judge, a copy of which is set forth in section 7 of the said Charles F. Burroughs' petition and in the documents made a part thereof and therein referred to.

Dated the 14th day of July, A. D. 1906.

MORGAN TREAT,
U. S. Marshal for the Eastern District of Virginia.

Writ of Certiorari.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

The President of the United States of America to the Judge of the District Court of the United States for the Eastern District of Virginia:

83 We being informed that there is now pending before you a suit in which the United States of America is plaintiff and Charles F. Burroughs is defendant; and we being willing, for certain reasons, that the said case and the record and proceedings therein should be certified by the Judge of the District Court of the United States for the Eastern District of Virginia and removed into the Circuit Court of the United States for the Eastern District of Virginia, sitting at Richmond, Virginia;

We do hereby command you forthwith that you send forthwith to the said Circuit Court of the United States for the Eastern District of Virginia, as aforesaid, the record and proceedings in said case, so that the said Circuit Court of the United States for the Eastern District of Virginia may act thereon as of right and according to law ought to be done.

Witness, The Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond, this 14th day of July, in the year of our Lord one thousand nine hundred and six, and of our Independence the 131st —.

[Seal United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Return of United States District Judge.

The Clerk of the United States District Court is hereby directed to deliver to the Judges of the United States Circuit Court within and for the Eastern District of Virginia the record and proceedings mentioned in the within writ.

Richmond, Va., July 14", 1906.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

84 *Transcript of Proceedings Before Honorable Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia.*

The following proceedings were had before Honorable Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia, at Richmond, Virginia, on the 14th day of July, 1906.

THE UNITED STATES
versus
CHARLES F. BURROUGHS.

Writ of Certiorari.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

The President of the United States of America to the Judge of the District Court of the United States for the Eastern District of Virginia:

We being informed that there is now pending before you a suit in which the United States of America is plaintiff and Charles F. Burroughs is defendant; and we being willing, for certain rea-
85 sons, that the said case and the record and proceedings therein should be certified by the Judge of the District Court of the United States for the Eastern District of Virginia and removed into the Circuit Court of the United States for the Eastern District of Virginia, sitting at Richmond, Virginia.

We do hereby command you forthwith that you send forthwith to the said Circuit Court of the United States for the Eastern District of Virginia, as aforesaid, the record and proceedings in said case, so that the said Circuit Court of the United States for the Eastern District of Virginia may act thereon as of right and according to law ought to be done.

Witness, The Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond, this 14th day of July, in the year of our Lord one thousand nine hundred and six, and of our Independence the 131st year.

[Seal of United States Circuit Court.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Return of United States District Judge.

The Clerk of the United States District Court is hereby directed to deliver to the Judges of the United States Circuit Court within and for the Eastern District of Virginia the record and proceedings mentioned in the within writ.

Richmond, Va., July 14", 1906.

EDMUND WADDILL, JR.,
U. S. District Judge.

86 *Complaint.*

Filed July 14th, 1906.

UNITED STATES OF AMERICA, *Eastern District of Virginia, set:*

On this 14th day of July, A. D. 1906, at the City of Richmond, in the said District, before the Hon. Edmund Waddill, Jr., Judge

of the District Court of the United States of America for the said District, comes Morgan Treat, United States Marshal in and for the said District, and upon his oath complains and says: that he has good cause to believe and does firmly believe that Charles F. Burroughs, of Norfolk, Virginia, stands indicted by the Grand Jury of the Circuit Court of the United States in and for the Middle District of Tennessee, for that the said Charles F. Burroughs on the eighth day of July in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, being during said period Vice-President of the F. S. Royster Guano Company a corporation existing under and by the laws of the State of Virginia, did in the said Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said Charles F. Burroughs did unlawfully conspire with divers other persons and
87 corporations to commit an offense against the United States, to-wit, the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States, all as more fully set out in an indictment filed in the said Circuit Court of the United States in and for the Middle District of Tennessee on May 25, 1906, in cause No. 963, entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," a certified copy of which indictment is hereto attached and made a part of this complaint; and complainant therefore charges that the said Charles F. Burroughs did commit the said offense against the United States in manner and form as set forth in said indictment.

Complainant furthermore avers upon information and belief that in pursuance of an order of said Circuit Court of the United States for the Middle District of Tennessee a bench warrant has been issued from said Court for the arrest of said Charles F. Burroughs and delivered to the Marshal of said Court, who after due search has returned said warrant "not found" in said Middle District of Tennessee; and that said Charles F. Burroughs is now believed to be within the Eastern District of Virginia, of which District he is a resident.

Wherefore this complainant prays that the said Charles F. Burroughs may be arrested and imprisoned and removed or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee, and further dealt with according to law.

MORGAN TREAT, *Marshal.*

Subscribed and sworn to before me by the above named Morgan Treat the day and year first above written.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

88 *Certified Copy of Indictment.*

In the Circuit Court of the United States of America for the Middle District of Tennessee, of the April Term, in the Year of Our Lord Nineteen Hundred and Six.

MIDDLE DISTRICT OF TENNESSEE, *sct:*

The grand jurors for the United States of America, inquiring for the Middle District of Tennessee, upon their oath present, that before and on the eighth day of July, in the year of our Lord nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year of our Lord nineteen hundred and five, the following named corporations, respectively organized and existing under and authorized by the laws of the several States and of the foreign country here named in connection with them, and hereafter in this indictment called corporation defendants, to wit, the Virginia-Carolina Chemical Company, of New Jersey, Armour and Company, of Illinois, the Acme Manufacturing Company, of North Carolina, the Alabama Chemical Company, of New Jersey, the Anderson Phosphate & Oil Company, of South Carolina, the Ashepoo Fertilizer Company, of South Carolina, the Blackshear Manufacturing Company, of Georgia, the Etiwan Fertilizer Company, of South Carolina, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, The Furman Farm Improvement Company, of Georgia, the Goulding Fertilizer Company, Limited, of Great Britain and Ireland, The Goulding Fertilizer Company, of Florida, the Gulfport Cotton Oil, Fertilizer & Manufacturing Company, of Georgia, the Home Mixture Guano Company, of Georgia, the Jackson Fertilizer Company, of Mississippi, the Marietta Fertilizer Company, of Georgia, the Meridian Fertilizer Factory, of Mississippi, the National Fertilizer Company, of Tennessee, the New Orleans Acid and Fertilizer Company, of New Jersey, the Old Dominion Guano Company, of Georgia, the Planters Chemical Company, of Alabama, the Read Phosphate Com-
89 pany, of West Virginia, the F. S. Royster Guano Company, of Virginia, the Savannah Guano Company, of Georgia, the Southern States Phosphate and Fertilizer Company, of Georgia, the Standard Chemical & Oil Company, of Alabama, the Standard Guano and Chemical Manufacturing Company, of Louisiana, Swift & Company, of Illinois, the Tennessee Chemical Company, of Tennessee, and the Tennessee Valley Fertilizer Company, of Alabama, and certain firms, to wit, the firm of A. D. Adair and McCarty Brothers and the firm of Wilcox, Ives & Company, did carry on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereafter in this indictment called the States of the conspiracy, as wholesale dealers in complete and alkaline fertilizers and in acid phosphates, nitrates, and potash salts suitable for fertilizers, which then were useful and valuable articles of merchandise, indispensable for use on the soil of the said States of the conspiracy in order that the staple

crops of those States might be raised therefrom; that the following named persons, hereafter in this indictment called individual defendants, to wit, Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, of the said Virginia-Carolina Chemical Company, and J. Rice Smith, agent and manager of the said Virginia-Carolina Chemical Company, and president of the Georgia Chemical Works hereinafter mentioned, Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, Fred G. Brown, president and treasurer of the said Anderson Phosphate & Oil Company, Frank Burbidge, president, and William J. McCormack, treasurer of the said Etiwan Fertilizer Company, George Braden, president of the said Federal Chemical Company, of Delaware, and also of the said Federal Chemical Company, of Kentucky, Augustus D. Adair and James D. McCarty, officers and agents of the said Furman Farm Improvement Company and members of the said firm of A. D. Adair and McCarty Brothers, William DeC. Kessler, secretary and treasurer of the said Goulding Fertilizer Company, Limited, James G. Tinsley, president of the said Marietta Fertilizer Company and vice-president of the said Tennessee Chemical Company, William D. Rhea, general manager of the said National Fertilizer Company, William L. Peel, president of the said Old Dominion Guano Company, Abram C. Read, vice-president and general manager, and Isaac Mayo Read, agent, of the said Read Phosphate Company,
Frank S. Royster, president, and Charles F. Burroughs, vice-
90 president, of the said F. S. Royster Guano Company, A. J. Ives, whose Christian name is to the said grand jurors unknown, secretary and treasurer of the said Savannah Guano Company and a member of the said firm of Wilcox, Ives & Company, T. Porter Fleming, vice-president of the said Southern States Phosphate and Fertilizer Company, and T. Garland Tinsley, president and treasurer of the said Tennessee Chemical Company, in their said several capacities as officers, managers, agents, and attorneys of the said corporation defendants and members of the said firms, and on behalf of those corporations and firms, during the period of time in this indictment first aforesaid, did carry on the business aforesaid; that in so carrying on the said business the said defendants, that is to say, the said corporation and individual defendants, did sell and deliver large quantities of the said merchandise within the limits of the said States of the conspiracy from the respective places of business of the said corporation defendants and the said firms, located at different points within those States, to retail dealers in and consumers of such merchandise, in such States respectively, and did also ship large quan-ties of the same from their respective places of business, located in the said States of the conspiracy and also in the States of Virginia, Illinois, and Kentucky, into and through other of the said States than those in which their said places of business were located; that in so carrying on the said business and shipping the said merchandise from one of the said States into and through another or others thereof, the said defendants, during the period

aforesaid, were engaged in trade and commerce among the States of this Union within the meaning of the Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in so carrying on the said business, trade and commerce, the said Virginia-Carolina Chemical Company and the said Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, and J. Rice Smith, agent and manager, of the said Virginia-Carolina Chemical Company, did make use of and operate a portion of their said business, trade and commerce through each of certain other corporations, to wit, the American Fertilizing Company, of Virginia, the Birmingham Fertilizer Company, of Alabama, the Coweta Fertilizer Company of Georgia, the Georgia Chemical Works, of Georgia, the Navassa Guano Company, of North Carolina, of either the whole or a majority of the capital stock of which said corporations respect-
91 ively the said Virginia-Carolina Chemical Company was the owner; that in so carrying on the said business, trade and commerce, the said Armour and Company and the said Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, did make use of and operate all of their said business, trade and commerce through a certain other corporation called the Tuscarora Fertilizer Company, of New Jersey, and a certain trade name, to wit, the trade name of Armour Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Furman Farm Improvement Company and the said firm of A. D. Adair and McCarty Brothers did make use of and operate a portion of their said business trade, and commerce under the trade name of Chickamauga Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Federal Chemical Company, of Delaware, and the said Federal Chemical Company of Kentucky, did make use of, and operate a portion of their said business, trade and commerce through, the names of Century Phosphate Company, Fox Chemical Company, Branch, Globe Fertilizer Company, Branch, and Tennessee Phosphate Company; that in so carrying on the said business, trade and commerce, the said National Fertilizer Company did make use of, and operate a portion of its said business, trade and commerce through, the corporate name of American Guano Company and the trade name of Nashville Guano Company; that in so carrying on the said business, trade and commerce, the said Read Phosphate Company did make use of, and operate a portion of its said business, trade and commerce through the corporate name of Empire Guano Company; that in so carrying on the said business, trade and commerce, the said F. S. Royster Guano Company did make use of, and operate a portion of its said business, trade and commerce through the trade name of Atlantic Chemical Company and the corporate name of Columbia Guano Company; that in so carrying on the said business, trade and commerce, the said Swift and Company did make

use of, and operate the whole of its said business, trade and commerce through, the trade name of Swift Fertilizer Works; and that in so carrying on the said business, trade and commerce, the said Tennessee Chemical Company did make use of, and operate a portion of its said business, trade and commerce through, the trade name of Continental Fertilizer Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that of the total volume of such business, trade and commerce then so being carried on by the said defendants and their competitors, the said defendants together had and controlled
92 the principal part, that is to say, ninety per centum thereof; and that because the said corporation defendants and the said firms were in fact separate and distinct from each other, they should have conducted their interstate trade and commerce strictly in competition with each other, during the said period, and then would have so conducted the same but for the unlawful conspiracy in restraint of the said business, trade and commerce in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, at and within the said Middle District of Tennessee, in violation of the provisions of said section one of the said Act of Congress, unlawfully did knowingly engage in a conspiracy in restraint of the said business, trade and commerce, so then being carried on by them in the manner aforesaid, whereby the said business, trade and commerce was restrained in the several ways and by the several means now here set forth and described, that is to say:

Competition as to the prices at which the said merchandise was sold and delivered by the said corporation defendants and the said firms in the said States of the conspiracy, which before the period of time in this indictment first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was prevented and destroyed by the said defendant from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them styled "current, reasonable market prices," for the said merchandise so sold and delivered by the said corporation defendants and the said firms in those States, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so fixed and caused to be fixed; which said uniform and non-competitive prices were prices greatly in excess of the prices which but for the said unlawful conspiracy would at such times have prevailed for the said merchandise in the said business, trade and commerce, and were prices therefore unreasonable, and were a tax on the people of the said States of the said conspiracy amounting to a large sum of money, to wit, four million dollars, annually during the continuance of the same.

For and on account of such quantity of the said merchandise as was sold and delivered as aforesaid by any of such corporation de-

fendants or of such firms, in excess of amounts allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and de-
93 livered in excess, was, by the corporation defendants and firms so selling and delivering the same, paid into a common fund, held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, compensated, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as sold and delivered less than the amounts so allotted to them respectively, so it was not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy that each of the said corporation defendants and of the said firms also paid into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be the absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm, in disposing of its said allotment in carrying on the said business, trade and commerce, on its part faithfully should exercise every reasonable effort and due business diligence to maintain the prices so fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its said excess sales, in which case an equal amount was returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also made uniform and non-competitive as between all of the said corporation defendants and the said firms, in the said business, trade and commerce, among the said States of the conspiracy.

As a convenient intermediary and common agent between the said corporation defendants and the said firms, respectively and as a means of securing their co-operation in carrying out the said unlawful conspiracy, the said defendants made use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company, Limited, was also allowed and re-
94 quired to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of September, in the year nineteen hundred and three, during the period of time aforesaid, at and within the City of New York, in the State of New York, unlawfully did knowingly, deposit with the Continental Trust Company, of the said City of New York, the sum of twenty-six thousand dollars, in connection with the purchase of by the said trust company on behalf of the said Virginia-Carolina Chemical Company, and in the name of one Montrose Stuart, a clerk in the office of the said trust company, of twenty-six hundred shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Samuel T. Morgan, on the seventh day of October, in the same year nineteen hundred and three, and during the period of time aforesaid, at and within the said city of New York, in the State of New York, unlawfully did deliver to the said William DeC. Kessler, Vice-President of the said Colonial Development Company, Limited, three checks drawn by the said Virginia-Carolina Chemical Company, one upon the National City Bank, of New York City aforesaid, for eighty thousand dollars, another on the Bank of America, of New York City aforesaid, for fifty thousand dollars, and the other on the National Park Bank, of New York City aforesaid, for thirty-five thousand and four hundred and sixty-eight dollars, aggregating one hundred and sixty-five thousand and four hundred and sixty-eight dollars, as and for a payment, by the said Virginia-Carolina Chemical Company, to the said Colonial Development Company, Limited, of twenty cents a ton on its allotment under the said unlawful conspiracy; he the said Samuel T. Morgan, when and where he so as aforesaid delivered the said checks to the said William DeC. Kessler, well knowing the character and purpose of the same, and well knowing that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as acts on their parts respectively of engaging in the same, the said Samuel T. Morgan,
Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox,
95 J. Rice Smith, Austin B. Carpenter, Charles G. Wilson,
Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, on the seventeenth day of September, in the year nineteen hundred and three, and during the period aforesaid, at the said City of New York, in the said State of New York, unlawfully did meet together to discuss and further the object of the said unlawful conspiracy; they the said Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy,

Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, when and where they so as aforesaid met together, each well knowing the character and purpose of the said meeting, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank E. Wilcox, on the first day of November, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did deliver to one W. W. Perkins, Secretary of the said American Fertilizing Company, a certain document, too voluminous to be here set forth, stating certain prices and terms of sale, fixed in pursuance of the said unlawful conspiracy, for the said fertilizer merchandise, in the States of North Carolina, South Carolina, Georgia, Florida, Alabama and Tennessee, for the spring season of the year nineteen hundred and four; he the said Frank E. Wilcox at the time and place when and where he so as aforesaid delivered the said document to the said W. W. Perkins, well knowing the character of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, and during the period of time aforesaid, at the town of Decherd, in the said Middle District of Tennessee, by and through one
96 F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, and during the period aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to

furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, and during the period of time aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at the City of Nashville, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, a certain notice of shipment, partly written and partly printed, in the words and figures following, that is to say:

"The Armour Fertilizer Works
Owned and operated by
Armour & Company.

Prudential Building,
Atlanta, Ga.

Duplicate.
To be Mailed with Bill of
Lading to Customer.

No. 612
March 10", 1905.

97 We have this day shipped from Nashville, Tenn. storage
To Bramlitt Hdw Co.
Corinth, Miss.
Charge to S. D. Bramlitt. Address same.

No. Bags.	Weight of bags.	Brand	Tons.
400	100	King Cotton 8.2.2	20

Order No. 4613.
Bill of lading herewith. Invoice will be mailed from Chicago.
Above quantities shipped 3 10 1905. Freight Terms.....
Car No. 13619. Via L. & N.
Charges prepaid $48.00.
THE ARMOUR FERTILIZER WORKS,
Per ALEX. LESLIE."

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the

said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Austin B. Carpenter, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Assistant Secretary of the said Colonial Development Company, unlawfully did sign his name, to wit, "A. B. Carpenter, Ass't Sec'y" on the face of a certain stock certificate, to wit, certificate No. 28, showing the ownership by one Thomas M. Green of fifty-one shares of the capital stock of the said Colonial Development Company; he the said Austin B. Carpenter, at the time and
98 place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his said act to be done in pursuance and to effect the object of the said conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles H. MacDowell, on the twelfth day of January, in the year nineteen hundred and five, and during the period of time aforesaid, at and within the city of Chicago, in the State of Illinois, unlawfully did sign his name, to-wit, "C. H. MacDowell," under the name of the Armour Fertilizer Works, and after the word "by" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Armour and Company, under the trade name of "Armour Fertilizer Works," offered to furnish and deliver at Corinth, in the State of Mississippi to one S. D. Bramlitt, twenty tons of the fertilizer merchandise aforesaid; he the said Charles H. MacDowell, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Acme Manufacturing Company, on the first day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the city of Wil-

mington, in the State of North Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of six hundred and twenty dollars for sixty-two shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Alabama Chemical Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Montgomery, in the State of Alabama, unlawfully did knowingly deliver its certain check drawn upon the Merchants and Planters-Farley National Bank, Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of William DeC. Kessler, as payment for forty-two shares of the capital stock of the said Colonial Development Company, Limited;

99 And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Anderson Phosphate and Oil Company, on the twenty-ninth day of August, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Anderson, in the State of South Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of five hundred and eighty dollars for fifty-eight shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly buy from the Carolina Savings Bank, Charleston, South Carolina, a draft upon the Citizens National Bank, of New York City, for the payment of the sum of seven thousand nine hundred and forty-nine dollars and forty-three cents to the order of one Frank E. Taylor, Vice-President and General Manager of the said Ashepoo Fertilizer Company;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and *and* during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly cause the said Frank E. Taylor to endorse the check last above mentioned payable to the order of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Blackshear Manufacturing Company, on the seventeenth day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Blackshear, in the State of Georgia, unlawfully did know-

ingly deliver to the Atlantic Coast Line Railroad Company six tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of E. J. Blume & Company, at Live Oak, in the State of Florida;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Etiwan Fertilizer Company, on the fourteenth day of December, in the year nineteen hundred
100 and three, and during the period of time aforesaid, at and within the town of Cairo, in the State of Georgia, by and through one P. H. Seabrook, its agent, unlawfully did knowingly offer and agree to furnish and deliver to the firm of Wight Brothers, of Cairo aforesaid, thirty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank Burbidge, on the first day of July, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Charleston, in the State of South Carolina, having then and there in his hands a certain check, dated the thirtieth day of June, in the same year nineteen hundred and four, drawn by the said Alabama Chemical Company upon the Continental National Bank of Chicago, for the payment of eleven hundred and forty-two dollars and ninety-seven cents to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Pay to order of People's National Bank, Colonial Development Co., Ltd., F. Burbidge, Pres."; he the said Frank Burbidge then and there, to wit, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William J. McCormack, on the ninth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, having then and there in his hands a certain check dated the fifth day of September, in the same year, drawn by the said New Orleans Acid & Fertilizer Company, upon the Louisiana National Bank of New Orleans, for the payment of seven hundred and fifty dollars to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Colonial Developm't Co., Frank Burbidge, Sec. & Treas., per Wm. J. McCormack"; he the said William J. McCormack, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy,

and to effect the object of the same, and as an act on its part of engaging in the same, the said Federal Chemical Company, of
101 Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the said State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, and during the period of time aforesaid, at Springfield afore-
102 said, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff & Williams, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Goulding Fertilizer Company, Limited, on the twenty-fifth day of November, in the year nineteen

hundred and three, and during the period of time aforesaid, at and within the town of Cullman, in the State of Alabama, by and through one W. E. Craig, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one John Sutterer, at Cullman aforesaid, three hundred and seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the sixth day of September, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Pensacola, in the State of Florida, having then and there in his hands a certain check, dated the fifth day of September, in the same year nineteen hundred and three, drawn by the said Alabama Chemical Company upon Merchandise Merchants and Planters-Farley National Bank of Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of W. DeC. Kessler, unlawfully did sign his name, to wit, "W. DeC. Kessler," upon the back of the said check next below the written words "Pay to the order of Colonial Development Co."; he the said William DeC. Kessler then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the back of the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the said fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Vice-President of the said Colonial Development Company, unlawfully did sign his name, to wit, "W. DeC. Kessler, V. P." on the face of the said stock certificate in the name of Thomas M. Green; he the said William DeC. Kessler, at the time and place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his act to be done in pursuance and to effect the object
103 of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Gulfport Cotton Oil Fertilizer and Manufacturing Company, on the twenty-seventh day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-four hundred dollars for and in respect of twelve thousand tons of the fertilizer merchandise aforesaid, allotted to the said Gulfport Cotton Oil, Fertilizer and Manufacturing Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy,

and to effect the object of the same, and as an act on its part of engaging in the same, the said Home Mixture Guano Company, on a day in the year nineteen hundred and three to the said grand jurors unknown, and during the period of time aforesaid, at and within the City of Columbus, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Jackson Fertilizer Company, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Jackson, in the State of Mississippi, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Marietta Fertilizer Company, on the twenty-first day of July, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by and through one L. W. Reeves, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one James A. Boyd, at Jonesboro aforesaid, seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said James G. Tinsley, on the third
104 day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Nashville, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley; he the said James G. Tinsley, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Meridian Fertilizer Factory, on the seventh day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Cullman, in the State of Alabama, by its agent E. L. Robbins, un-

lawfully did knowingly offer to furnish to C. A. Steifelmeyer one hundred and fifty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge; he the said
105 William D. Rhea, then and there, to wit, at the time and place when and where he so directed and required the said E. W. Connell to sign his name as aforesaid to the said check, well knowing the nature and contents of the said check, and that his said direction and requirement were in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid; he the said William D. Rhea then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the said document, well knowing the character of the same, and well knowing his said act to be one done in pursuance of and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said New Orleans Acid & Fertilizer Company, on

the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars for seventy-five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Old Dominion Guano Company, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-six hundred and twenty dollars, for and in respect of
106 thirteen thousand one hundred tons of the fertilizer merchandise aforesaid, allotted to the said Old Dominion Guano Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William L. Peel, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did sign his name, to wit, "W. L. Peel, Prest.," to a certain check, to wit, a check drawn by the Maddox-Rucker Banking Company upon the National Park Bank, New York, for the payment of twenty-six hundred and twenty dollars to the order of the said Colonial Development Company, Limited; he the said William L. Peel, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Planters Chemical Company, on the thirtieth day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Talladega, in the State of Alabama, unlawfully did knowingly pay the said Colonial Development Company, Limited, the sum of fifty dollars for five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Read Phosphate Company, on the fifth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Hartselle, in the State of Alabama, unlawfully did knowingly offer to sell and deliver to one S. E. Stewart, at that place, forty to fifty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of en-

gaging in the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here
107 set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid; he the said Abram C. Read, then and there, to wit, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved, Nashville, Tenn. Dec. 6, 1904," and above the word "Manager," upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof, offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid; he the said Abram C. Read then and there, to wit, at the time and place when and where he so as aforesaid signed his name to the last mentioned document, well knowing the character and contents of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said F. S. Royster Guano Company, on the thirtieth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine thousand three hundred and fourteen dollars and seventy-four cents, on account of such merchandise sold and delivered by the said F. S. Royster Guano Company in excess of its allotment under the aforesaid unlawful conspiracy;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles F. Burroughs, on the
108 twenty-fifth day of March, in the year nineteen hundred and four, and during the period of time aforesaid, at and within

the City of Norfolk, in the State of Virginia, unlawfully did sign his name, to wit, "C. F. Burroughs," under the word "countersigned" and above the words "Vice-President" upon the face of a certain document, partly written and partly printed, too voluminous to be here set forth in full, wherein and whereby the said F. S. Royster Guano Company and he the said Charles F. Burroughs, as Vice-President thereof, offered to sell to one J. W. Carter, and to deliver to him at Maxton, in the State of North Carolina, ten tons of the fertilizer merchandise aforesaid; he the said Charles F. Burroughs, at the time and place when and where he so as aforesaid signed his name to the said document, well knowing the character and contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Savannah Guano Company, on the second day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did knowingly pay to the said Frank Burbidge the sum of nine hundred and forty dollars for ninety-four shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said A. J. Ives, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did sign his name, to wit, "A. J. Ives, Secty. & Treas." to a certain check, to wit, a check drawn by the Savannah Guano Company upon the Merchants National Bank, Savannah, Georgia, for the payment of three thousand one hundred and forty dollars to the order of New York Exchange; he the said A. J. Ives, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further n pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Southern States Phosphate and Fertilizer Company, on the fifth day of September, in the year nineteen
109 hundred and three, and during the period of the time aforesaid, at and within the City of Augusta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine hundred and sixty dollars for ninety-six shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Chemical and Oil Company, on the third day of October, in the year nineteen hundred and three,

and during the period of time aforesaid, at and within the Town of Troy, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand dollars for and in respect of one-half of forty thousand tons of the fertilizer merchandise aforesaid allotted to the said Standard Chemical and Oil Company, as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Guano and Chemical Manufacturing Company, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand seven hundred and seventy-four dollars and seventy-seven cents as a partial payment for and in respect of the fertilizer merchandise aforesaid, allotted to the said Standard Guano and Chemical Manufacturing Company, as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Swift & Company, on the first day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by its agent, J. Z. Elliott, unlawfully did knowingly offer to furnish to one W. P. Diehl thirty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

And that, further in pursuance of the said unlawful con-
110 spiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes & Bro., at Oxford, Alabama, a certain letter of the tenor following, to wit:

T. G. Tinsley, Pres't & Treas. Allen Hardison, Sec'y.

Tennessee Chemical Company, Manufacturers and Importers of Ox Fertilizers.

NASHVILLE, TENNESSEE, *May* 17, '05.

Messrs. D. P. Haynes & Bro., Oxford, Ala.

DEAR SIRS:—I am in receipt of your favor of the 16th and beg to state we could not allow any discount further than the 5% for cash settlement. We will be glad to have you settle in cash on this basis if you desire to do so, but are sorry to state we are not in a position to offer you any further discount.

Yours truly, T. G. TINSLEY, *President;*

he the said T. Garland Tinsley then and there, to wit, at the time and place when and where he so as aforesaid caused the said letter to be written and sent as aforesaid, well knowing that the same was so written and sent in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part in engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Company, James G. Tinsley. By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon the Mercantile National Bank, New York, for the payment of
111 sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley; he the said T. Garland Tinsley, at the same time and place when and where he so as aforesaid wrote the said endorsement on the back of the said check, well knowing the contents of the same, and that his said act was done in pursuance of and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Valley Fertilizer Company, on the second day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Florence, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars, as a partial payment for and in respect of fertilizer merchandise aforesaid, allotted to the said Tennessee Valley Fertilizer Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on their parts respectively, of engaging in the same, the said Frank Burbidge,

Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson, during the period of time aforesaid, at the City of New York, in the State of New York, the City of Washington, in the District of Columbia, Old Point Comfort and Hot Springs, in the State of Virginia, St. Augustine, in the State of Florida, and French Lick Springs, in the State of Indiana, unlawfully did as officers, directors and attorney of the said Colonial Development Company, Limited, meet together for the purpose of discussing and attending to the affairs of the said Colonial Development Company, Limited; they the said Frank Burbidge, Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson when and where they so met together aforesaid, well knowing the purpose of such meetings, and well knowing their acts in the premises to be acts in pursuance and to effect the object of the said unlawful conspiracy, and that the same were done as acts on their parts respectively of engaging in the said unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, during the period of time aforesaid, and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form aforesaid, unlawfully did engage in a conspiracy in restraint of trade and commerce among the several States; Against the
112 peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

SECOND COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the first count described, and were so engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord, nineteen hundred and three at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the grand jurors unknown, and engage in a conspiracy, among themselves and with such other

unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid; which said unlawful conspiracy in this count mentioned then and there was a conspiracy for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described; that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing and causing to be fixed, uniform and non-competitive prices, by them to be styled "current, reason-
113 able market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such times prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum ther-of during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be the

absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on the said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its excess sales, in which case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of pay-
114 ment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their cooperation in carrying out the said unlawful conspiracy, the said defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, and as being acts on the part of the said corporation and individual defendants respectively of engaging in that conspiracy, are now here in this count charged to be acts by the same corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned, and to have been acts on the part of the said corporation and individual defendants respectively of engaging in the last-named unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the

said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of trade and commerce among the several States;
115 against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

THIRD COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the said first count described, and so were engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the said United States, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the said United States, to wit, the offense of engaging in a combination, among themselves and with such other unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid, which said unlawful conspiracy in this count mentioned then and there was a conspiracy to engage in a combination for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and com-
116 merce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them to be styled "current,

reasonable market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such time prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful combination and ninety per centum thereof during the second year; it being a further element of the said unlawful combination in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be — absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on the said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its excess sales, in which
117 case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their cooperation in carrying out the said unlawful combination, the said

defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful combination; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, are now here in this count charged to be acts by the said corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a con-
118 spiracy to commit an offense against the said United States;
Against the peace and dignity of the said *said* United States;
Against the peace and dignity of the said United States, and contrary to the form of the statute in such case made and provided.

Fourth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in

connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State, but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchan-
119 dise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the aforesaid business and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section one of the said Act of Congress, approved July 2, 1890, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Ala-

bama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company,
120 and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly engage in a conspiracy in restraint of commerce among the several States, to wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, whereby the said commerce was restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise which were maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the period of such unlawful conspiracy, and greatly in excess of those prices which would have otherwise prevailed in the said States during the period of such unlawful conspiracy, and were therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby earnest money was given to secure the maintenance of such prices and compensation was made to those losing volume of business by reason of maintaining such prices, that is to say:

There was from time to time allotted to each of said corporation

defendants and firms an amount of tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporations defendants and firms paid into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sums becoming due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which faithfully maintained such uniform and non-competitive prices and failed to make sales
121 and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but sold and delivered through itself and its subsidiary companies a minimum amount thereof required as a guarantee of good faith, received from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid fell short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies made such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, as a penalty upon such excess sales, paid into such common fund like amounts per ton on the said respective kinds of fertilizers, divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means whereby said unlawful conspiracy was effected, a corporation of Ontario, Canada, whose stock was apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was the common fund aforesaid into which was paid the earnest money and penalties on excess sales aforesaid, and from which was paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which the same was operated and directed.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that within the period aforesaid of said unlawful conspiracy in this count of this indictment mentioned, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and did do and perform such acts as acts on their respective parts of engaging in the said unlawful conspiracy in this count of this indictment mentioned, and that each of such defendants at the time and place when

and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant- respectively, then and there well knew the character of such act and that such
122 act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, and as an act on the part of such defendant in engaging in the same, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year, nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the
123 tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to

Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chatta-
124 nooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit,
125 "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawul conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec. 6, 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abraham C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P.
126 Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said corporation and individual defendants, during the period of time aforesaid, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

FIFTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen

hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the
127 other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so

carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, approved July 2, 1890, the said corporation de-
128 fendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, and engage in a conspiracy among themselves and with such other unknown corporations and persons, in restraint of commerce among the several States, to-wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid by which unlawful conspiracy said commerce was to be restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the

various points of delivery in the said States of the conspiracy,
129 which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy, and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices, that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to make sales and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales as aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose
130 treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary

and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful conspiracy was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that such act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

131 In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one

Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesand, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company,
132 on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of

Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District
133 of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his, the said E. W. Connell's name as such Treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fer-

tilizer Company offered to sell a. d deliver to one James A. Boyd, at Jonesboro, in the said State of Tenneess, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn., Dec. 6 1904" and
134 above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for

the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

135 SIXTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United

States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An
136 Act to protect trade and commerce against unlawful restraints and monopolies"; that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorneys of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and in the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section 5440 of the Revised Statutes of the United States, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack,
137 George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Roys-

ter, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the United States, to wit, to engage in a combination in restraint of commerce among the several States, namely, a combination in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, and did then and there so conspire to commit the aforesaid offense by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy; and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices; that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to
138 make sales and deliveries of such merchandise through itself and its subsidiary — amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation

defendants and firms which, through itself and its subsidiary companies, should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful combination was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that
139 such act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the

object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at
140 West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and

within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchan-
141 dise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Arndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee,

unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Man-
142 ager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec 6 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee,

unlawfully did cause to be written and sent by mail to "D. P. Haynes and Bro.," at Oxford, Alabama, that certain letter of the date
143 set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley, By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did conspire to commit an offense against the United States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

ABRAM M. TILLMAN,
United States Attorney.

(Endorsed as follows:) No. 963. United States Circuit Court, Middle District of Tennessee. *The United States vs. Virginia-Carolina Chemical Company et als.*

Indictment for violating Act of Congress approved July 2, 1890, and entitled "An Act to Protect Trade and Commerce against unlawful restraints and monopolies," and Section 5440 R. S. U. S.

A True Bill. Robert Q. Stewart, Foreman of the Grand Jury.

Names of Witnesses Sworn and Examined Before the Grand Jury.

J. C. Adams, Henry E. Ahern, Lee Ashcraft, Eugene Atkinson, N. E. Barker, W. F. Barrett, James C. Beck, J. M. Berry, W. W. Bird, L. W. Botts, Clarence Braden, S. D. Bramlitt, A. P. Brantley,
144 B. D. Brantley, Dewitt Brown, H. C. Brown, Arthur Bussey, Hezekiah Bussey, E. J. Blume, James A. Boyd, William F. Burns, Oscar Bright, J. W. Carter, B. G. Clark, C. W. Comes, E. W. Connell, Charles Earle Currie, R. L. Davis, Joseph Denee, W. P. Diehl, A. M. Dobbs, John V. Dobson, C. H. Drayton, W. L. Dumas, J. B. Duncan, S. Eastland, T. B. Edwards, Culpepper Exum, H. C. Fischer, J. B. Fiser, Albert French, C. A. Gambrill, A. H. George, John E. Gibbs, William Gilchrist, James M. Goldsmith, A. A. Green, E. P. Grice, W. A. Hansell, G. A. Harrington, H. J. Harby, Allen Hardison, L. C. Hayne, J. L. Haynes, D. P. Haynes, R. W. Henderson, P. W. Hendricks, E. R. Hodgson, junior, E. R.

Hodgson, senior, J. L. Horn, W. E. Hudson, T. J. Hunt, R. H. Johnston, T. V. Kessler, E. M. Kirk, Henry Kirn, H. L. Law, Alexander Leslie, J. A. Lindsey, W. Hampton Logan, Harry Luck, John A. Lewis, W. F. McKenzie, Robert F. Maddox, H. W. Malloy, E. R. Manning, H. L. Milligan, J. Allen Moore, M. B. Neece, W. J. Oliver, E. Thomas Orgain, D. B. Osborne, Every M. Paget, W. W. Perkins, Dr. J. D. Plunkett, F. B. Pope, William Price, Charles Rainey, Frederick Rayfield, Isaac W. Read, W. A. Reynolds, I. T. Rhea, W. E. Richards, H. A. Rogers, V. N. Roadstrum, W. G. Sadler, G. W. Sanders, E. M. Sentelle, W. McR. Smith, R. G. Sparrow, J. F. Stackley, C. A. Steifelmeyer, S. E. Stewart, W. B. Stratford, John Sutterer, E. R. Taber, Frank E. Taylor, W. B. Taylor, W. D. Tharin, J. R. Timmerman, J. W. Todd, S. W. Travers, George H. Tucker, E. Van Winkle, J. T. Welch, O. C. Wiley, C. H. Willcox, T. B. Williams, Benjamin L. Willingham, W. S. Wight, E. G. Woodling.

Filed 11:30 A. M., May 25, 1906. H. M. Doak, Clerk, by E. L. Doak, Deputy Clerk. Abram M. Tillman, U. S. Atty.

I, H. M. Doak, Clerk of the Circuit Court of the United States in and for the Middle District of Tennessee, hereby certify that the foregoing is a true, perfect, and complete copy of an indictment filed as thereupon endorsed, etc. In witness whereof I have hereunto signed my name and affixed the seal of said court, at my office, this the 26th day of May, 1906.

[SEAL OF COURT.] H. M. DOAK, *Clerk.*

145 *Warrant.*

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

To the Marshal of the Eastern District of Virginia, Greeting:

Whereas complaint in writing, on oath, has been made to me charging that Charles F. Burroughs of Norfolk, Virginia stands indicted by the grand jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said Charles F. Burroughs on the eighth day of July, in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, did in the Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said Chas. F. Burroughs did unlawfully conspire with divers other persons and corporations to commit an offense against the United States, to-wit, the offense of

engaging in a combination in restraint of trade and commerce among the several States of the United States; and application has been made to me that the said Chas. F. Burroughs may be arrested and imprisoned and removed or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee;

146 Now therefore, you are hereby commanded to arrest the said Charles F. Burroughs if he be found within your said District, and bring him forthwith before me at my Chambers in Richmond, in order that he may be dealt with according to law.

Richmond, Va., July 14th, 1906.

EDMUND WADDILL, Jr.,
U. S. District Judge.

Marshal's Return.

Pursuant to the within writ, I have taken the defendant Charles F. Burroughs into custody and now have him before Hon. Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia.

July 14, 1906.

MORGAN TREAT,
United States Marshal.

Conclusions of the Court.

Filed July 14th, 1906.

THE UNITED STATES
vs.
CHARLES F. BURROUGHS.

The conclusions reached by the Court *is* that in a proceeding for the arrest and removal of persons charged with a violation of the laws of the United States pursuant to section 1014 of the Re-

147 vised Statutes of the United States, before a United States District Judge sitting in the State of Virginia, in which State there no longer exists the right of a preliminary examination upon a criminal charge prior to the trial upon the merits, when such Judge is called upon to act as well in the matter of the apprehension of such persons, as in their removal to the jurisdiction in which they have been indicted, that upon the government's presentation of a sufficient indictment regularly found by a grand jury in a court of the United States, properly charging the commission of an offense within the district in which such indictment is found, coupled with proof of the identity of the person indicted, it is its duty to properly bail such person for appearance before the Court in which he is indicted, or cause him to be removed thereto.

Order Allowing Bail.

Filed July 14th, 1906.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The within named Charles F. Burroughs having been brought before me, and identified; and it appearing by a duly authenticated copy of an indictment that he stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," for violation of section one of the act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United
148 States, it is ordered that the said Charles F. Burroughs give bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial before said Court under the said indictment, or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee, to be there dealt with according to law.

Richmond, Va., July 14", 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the
Eastern District of Virginia.

Warrant of Imprisonment and Removal.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The President of the United States to the United States Marshal of the Eastern District of Virginia, Greeting:

Whereas it has been made to appear that Chas. F. Burroughs stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled: "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," for violation of section one of the act of Congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States; and whereas the said Chas. F. Burroughs having been brought before me, and identified; and a certified copy of said indictment furnishing probable cause to believe him to be guilty
149 as therein charged, and whereas it was thereupon ordered by me that said defendant give bail in the sum of five thousand dollars with one or more sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial under said indictment, or that in default thereof he be imprisoned for seasonable removal to the said Middle

District of Tennessee to be there dealt with according to law; and the said defendant having failed and refused to give bail as required, therefore:

You are hereby commanded in the name and by the authority of the said United States to imprison the said Chas. F. Burroughs in accordance with law, and that with all convenient speed you remove him hence to the said Middle District of Tennessee and there surrender him to the Marshal of that District, there to be dealt with according to law.

Richmond, Va., July 14, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

Marshal's Return on Foregoing Warrant

Executed July 14, 1906, by taking the within named defendant Chas. F. Burroughs into custody, but before the order of removal was executed, a writ of *Habeas Corpus* was issued by order of the Circuit Court of the United States for the Eastern District of Virginia, sitting at Richmond, Virginia, commanding me to produce the body of the said Chas. F. Burroughs before the said United States Circuit Court in the City of Richmond, Virginia, forthwith, and in pursuance of said writ of *Habeas Corpus*, I took the said
150 Charles F. Burroughs before the United States Circuit Court as aforesaid, by which court said writ of *Habeas Corpus* was discharged and an appeal allowed to the said Chas. F. Burroughs to the Supreme Court of the United States, pending which appeal the said Chas. F. Burroughs was by order of said Circuit Court discharged from custody on bond conditioned for his appearance before said Circuit Court to abide such order as should be made by said Circuit Court upon return of the mandate of said Supreme Court of the United States upon determination of said appeal.

Richmond, Virginia, July 14, 1906.

MORGAN TREAT,
United States Marshal.

Statement of Proceedings and Order.

Filed July 14, 1906.

THE UNITED STATES OF AMERICA, *Eastern District of Virginia:*

THE UNITED STATES
vs.
CHARLES F. BURROUGHS.

This is an application under the provisions of Section 1014 of the United States Revised Statutes for a warrant for the removal of

Chas. F. Burroughs to the Middle District of Tennessee and comes before me as follows:—

The District Attorney for this District, together with Mr. E. T. Sanford, Counsel for the United States, presented to me a verified complaint of Morgan Treat, United States Marshal for this District, with a certified copy of an Indictment filed on May 25th, 1906, in the Circuit Court of The United States for the Middle District of Tennessee in the case of the United States *vs.* Virginia-
151 Carolina Chemical Company and other defendants, including among such defendants the said Charles F. Burroughs. Said complaint and copy of said indictment are made parts of this order. Upon the exhibition of this Indictment and affidavit and the *ex parte* motion of the counsel for the United States I made an order for the arrest of said Charles F. Burroughs and his production before me.

This order was duly executed by the said Marshal, who arrested the said Chas. F. Burroughs and brought him before me in Richmond on this 14th day of July, 1906, as shown by his return. When the accused was so brought before me it was moved by the counsel for the United States that inasmuch as the indictment charged offenses against the United States triable in the Circuit Court of said United States for the Middle District of Tennessee, and the identity of the defendant was admitted, that an order be forthwith made for the commitment of said Chas. F. Burroughs for trial before said Circuit Court.

This motion was made upon the certified copy of the Indictment without any further testimony, the identity of the party arrested and brought before me as the Chas. F. Burroughs mentioned in the Indictment being admitted.

And thereupon the defendant Chas. F. Burroughs offered himself as witness in his own behalf, and being about to be sworn, the United States, by its Counsel, thereupon objected to the witness being sworn, or to any testimony being given in rebuttal of the indictment in these proceedings on the ground that the identity of the defendant being admitted, inasmuch as the indictment on its face charges offenses against the United States committed and triable in the jurisdiction in which the defendant stands indicted, no evidence is admissible here to impeach the indictment, and the order of commitment, should be made without further proof.

The Defendant's counsel thereupon offered to prove by the defendant and other witnesses then and there present, that the
152 Circuit Court for the Middle District of Tennessee had no jurisdiction over the person of said defendant touching the offense charged in said indictment, in that defendant and said other witnesses would, if permitted, testify that said Charles F. Burroughs has not been within the State of Tennessee for the period of seven years next preceding the 14th day of July, 1906, and neither has he through himself or through any agent nor has any firm or corporation in which the said Burroughs is interested ever done any business of any kind in the State of Tennessee within seven years next preceding said 14th day of July, 1906, except to purchase

phosphate rock from the owners of mines in Tennessee and that he has never at any time made, entered into or engaged in any of the conspiracies mentioned in the said indictment or any other conspiracy within the Middle District of Tennessee, nor did he by or through any agent or agents, attorney or attorneys do or attempt to do within the said Middle District of Tennessee any of the matters and things alleged and aver-ed in said indictment to have been done by him and the other defendants named therein nor did he personally or by or through any agent or attorney join in or assent to said alleged conspiracies or any of them in the Middle District of Tennessee or at any time or any place do any act in furtherance thereof or to effect the objects of said alleged conspiracies or any of them in the Middle District of Tennessee. Nor has the defendant done, or performed, or been engaged in, or a party to the same, or any of them, in any other place or places, at any other time or times whatsoever in the said District.

Thereupon counsel for the Government renewed its objections as aforesaid.

After hearing counsel on both sides, the Court announced its conclusions as follows:—

"The conclusion reached by the Court is that in a proceeding for the arrest and removal of persons charged with a violation of
153 law of the United States pursuant to section 1014 of the Revised Statutes of the United States, before a United States District Judge, sitting in the State of Virginia, in which State there no longer exists the right of a preliminary examination upon a crime charged prior to the trial upon the merits, when said Judge is called upon to act as well in the matter of the apprehension of such persons, as in their removal to the jurisdiction in which they have been indicted, that upon the Government's presentation of a sufficient indictment regularly found by a grand jury in a court of the United States, properly charging the commission of an offense within the district in which such indictment is found, coupled with proof of the identity of the person indicted, it is its duty to properly bail such person for appearance before the court in which he is indicted, or cause him to be removed thereto."

Therefore, it was ordered that the testimony offered is inadmissible, and will not be received, and I therefore made the following order:

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The within named Charles F. Burroughs having been brought before me, and identified; and it appearing by a duly authenticated copy of the indictment that he stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al.,*" for violation of section one of the act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for

violation of section 5440 of the Revised Statutes of the United
154 States, it is ordered that the said Charles F. Burroughs give bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial before said court under the said indictment; or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee, to be there dealt with according to law.

Richmond, Va., July 14th, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

And after said order had been made and the defendant declined to give bond, the Counsel for the United States moved that the warrant do issue directed to the Marshal of this District for the imprisonment and removal of the said Charles F. Burroughs to the Middle District of Tennessee, and his delivery to the custody of the United States Marshal of that district.

On such motion counsel for the said Charles F. Burroughs objected and again offered the said Chas. F. Burroughs as witness, together with the other witnesses herebefore referred to, to establish the same matters and facts as hereinbefore stated with regard to the objection to the order for the commitment of the said Chas. F. Burroughs which testimony was again offered and was again objected to by the counsel for the United States on the same grounds as above set forth, and on the further ground that these matters could not now be inquired of in this stage of the proceedings, and was again excluded by the Court, to all of which counsel for the said Chas. F. Burroughs duly excepted and had the exceptions noted and entered.

I therefore issued a warrant directed to the Marshal as follows:

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

Richmond, Va., July 14, 1906.

155 *Warrant of Imprisonment and Removal.*

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The President of the United States to the United States Marshal of the Eastern District of Virginia, Greeting:

Whereas it has been made to appear that Charles F. Burroughs stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled: "The United States *vs.* Virginia-Carolina Chemical Company *et al.*" for violation of section one of the act of Congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States; and whereas the said Chas. F. Burroughs having been brought before me, and identified; and a certified copy of said indictment furnishing probable cause to believe him

to be guilty as therein charged, and whereas it was thereupon ordered by me that said defendant give bail in the sum of five thousand dollars with one or more sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial under said indictment, or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee to be there dealt with according to law; and the said defendant having failed and refused to give bail as required therefore:

You are hereby commanded in the name and by the authority of the said United States to imprison the said Charles F. Bur-
156 roughs in accordance with law, and that with all convenient speed you remove him hence to the said Middle District of Tennessee and there surrender him to the Marshal of that District, there to be dealt with according to law.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

Richmond, Va., July 14, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

Richmond, Va., July 14, 1906.

Certificate of Clerk.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

I, G. E. Bowden, Clerk of the District Court of the United States for the Eastern District of Virginia, do hereby certify that the foregoing is a full and true transcript of the record and proceedings in the therein entitled cause made in obedience to the direction
157 in the return of the Honorable Edmund Waddill, Jr., Judge of said Court to the writ of certiorari, attached to and made a part of said record.

In witness whereof, I have hereunto set my hand and affixed the seal of the said District Court, at the City of Richmond, this 14th day of July, A. D., 1906.

[Seal United States District Court.]

G. E. BOWDEN,
Clerk United States District Court,
By JOSEPH P. BRADY,
Deputy Clerk U. S. District Court.

Certificate of United States District Judge.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

I, Edmund Waddill, Jr., Judge of the District Court of the United States for the Eastern District of Virginia do hereby certify that the foregoing is a full and true transcript of the record and proceedings had before me in the therein entitled cause.

In witness whereof, I hereunto set my hand and seal of said Court at Richmond, this 18th day of July, A. D., 1906.

[Seal United States District Court.]

EDMUND WADDILL, JR.,
United States District Judge.

158 *Conclusions of the Court.*

Filed July 14th, 1906.

In the United States Circuit Court for the Eastern District of Virginia.

In the Matter of the Petition of CHARLES F. BURROUGHS for Writs of *Habeas Corpus* and Certiorari.

CHARLES F. BURROUGHS, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

Petitioner alleges that he is unlawfully deprived of his liberty. He prays that by virtue of the writ of *Habeas Corpus*, he may be discharged from custody. I find from the petition, from its exhibits, and from respondent's reply that petitioner has been committed to the Marshal of the Eastern District of Virginia by an order of the United States District Judge of that District, with directions to remove petitioner to the Middle District of Tennessee, in order that he may be there tried on an indictment in which he with others, is charged with a violation of the laws of the United States. The proceedings so resulting were conducted under the provisions of section 1014 of the Revised Statutes of the United States. The Judge so hearing the matter, and so issuing said order of removal, acted in conformity with like proceedings, as provided for in criminal actions in the state of Virginia, in which state petitioner resides, and where the application for his removal was made.

On the hearing of this petition, I am asked to permit peti-
159 tioner to offer testimony, the object of which is to show that probable cause does not exist as to petitioner's guilt of the offense of which he is charged; that he was not within the limits of the jurisdiction of the Middle District of Tennessee when said offense is alleged to have been committed; and testimony tending to show that he is innocent of the charge alleged in the indictment returned against him. Petitioner insists that he should not be removed to said Middle District of Tennessee for trial, but should be discharged from arrest. Should I, on this hearing, permit such testimony? I find from the record before me, that the indictment charges conspiracy; that it is alleged therein that petitioner with

others, did in the Middle District of Tennessee, conspire to commit an offense against the laws of the United States. The indictment, in my judgment, sufficiently sets forth such offense. I find that it is in due form, and that it charges a crime; that it alleges a conspiracy such as is prohibited by the laws of the United States; and that an overt act, as described in the statute is charged as having taken place in the Middle District of Tennessee. Such being the charge, I am of the opinion, under the law applicable thereto, that the personal presence of petitioner in said jurisdiction was not essential; and that he can be lawfully proceeded against in that district; and if the allegations set out in the indictment are sustained by competent evidence, that a conviction there can be upheld.

If such be the case, does it not follow that the testimony offered by the petitioner is immaterial? The indictment charges the commission of a crime; alleges that the petitioner with others committed it; and the laws authorizes his conviction in the district to which he has been ordered removed, if an overt act in pursuance of
160 said conspiracy was committed there. Technical objections to said indictment should not be considered by me on this hearing; they should only be heard by the court in which the indictment was returned.

While it is true that the order to remove for trial should only be issued in cases where probable cause has been shown, it is equally true that a certified copy of the indictment, with proof of the identity of the party accused, has been in a number of well considered cases, held to establish probable cause, and to authorize the warrant of removal. It must be conceded that the authorities are conflicting; but to my mind the path we should follow has been plainly indicated by the opinions of that great tribunal, whose mandates we all obey, whose judgments are the supreme law of the land. In Beavers *v.* Hanckel, 194 U. S., 73, the case rested on the efficacy of the indictment; for no other evidence of guilt was offered. The indictment was held to be *prima facie* evidence of the existence of probable cause. It satisfied the requirements of the constitution, and the laws made thereunder. Why should not the indictment in the case we now have under consideration serve the same purpose? The testimony tendered is, as I understand this case, immaterial, and the identity of the accused is admitted. His guilt or innocence is not to be ascertained by testimony offered in this jurisdiction, in connection with questions involved in the proceedings relating to the warrant of removal, or this writ of *habeas corpus*. That matter must go to the jury impaneled by the court in which the indictment was returned. To hold otherwise would result in inextricable confusion, and to discharge the petitioner on the showing now made, would tend to impede the due administration of justice; and can
161 only be done, in my opinion, by a strained construction of the statutes.

The writ will be dismissed, and petitioner will be remanded to the custody of the Marshal.

NATHAN GOFF,
U. S. Circuit Judge.

July 14th, 1906.

Order Dismissing Petition and Discharging Writ of Habeas Corpus and Allowing Appeal.

Filed July 14th, 1906.

In the Circuit Court of the United States for the Eastern District of Virginia.

In the Matter of the Petition of CHARLES F. BURROUGHS for Writs of *Habeas Corpus* and Certiorari.

CHARLES F. BURROUGHS, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

This cause was on this, the 14th day of July, 1906, heard before the Honorable, the Circuit Court of the United States for the Eastern District of Virginia, the Honorable Nathan Goff, Circuit Court Judge, presiding, upon the petition of said Charles F. Burroughs in this cause and the return of the Marshal, the defendant,
162 thereto, and the return of the District Judge of the Eastern District of Virginia (by agreement the copy of the findings and order of said District Judge being here now taken as his return to said writ of certiorari, and the motion of the petitioner, by his counsel, hereinafter mentioned.

The petition and the return of the Marshal thereto were read, and thereupon the petitioner presented himself as a witness and his counsel moved the Court that he be sworn in order to testify as such, and as such witness to prove the facts averred and set forth in said petition, which facts were then and there repeated and restated to the Court; and his counsel then also stated that the said witness, and other persons then present as witnesses, would testify and prove that the said facts set forth and averred in the petition and exhibits, and repeated by him to the Court, were true.

Thereupon the Honorable Edward T. Sanford, Special Counsel representing the United States, and also the defendant Marshal, objected to the swearing of the said petitioner as a witness and also to the admission of said evidence, upon the ground that said evidence was immaterial and irrelevant, and that it was not allowable to contradict or transverse by evidence in this Court the averments of the indictment which had been found against the petitioner in the Circuit Court of the United States for the Middle District of Tennessee, and that there was no error in the action of the District Judge. The objection so made was sustained, and the witness not allowed to be sworn nor allowed to testify to the facts above stated, to which action of the Court the petitioner then and there excepted.

Thereupon it was ordered and adjudged by the said Court
163 that the petition be dismissed and the writ of *habeas corpus* heretofore issued in this cause upon the said petition be and the same is hereby dismissed and discharged; and that the said Charles F. Burroughs be remanded to the custody of said Morgan Treat, U. S. Marshal, for the Eastern District of Virginia, to be dealt with by him according to the directions of the writ of the process under which he had custody of the said Charles F. Burroughs.

Thereupon, the petitioner presented his petition, setting forth that he was aggrieved by the said order dismissing the said writ of *habeas corpus,* and praying that he be allowed to prosecute an appeal from said final order or judgment, to the Supreme Court of the United States under and according to the law of the United States in that behalf made together with his assignment of error in that behalf which appeal is allowed; and the petitioner having been allowed and the said appeal being hereby granted, the petitioner, by his counsel, thereupon moved the Court that he be enlarged or admitted to bail pending the decision of his said case upon said appeal; and thereupon it was accordingly ordered that the said petitioner and appellant be, and he is hereby enlarged upon his bond and admitted to bail, pending the said appeal to the Supreme Court of the United States; said bond to be in the penal sum of $5,000.00, to be taken and approved by the Clerk of this Court and conditioned for the said petitioner and appellant to appear before this Court to abide such order as shall be made by this Court upon the mandate of the Supreme Court of the United States upon the determination of petitioner's said appeal; and upon the execution by the said Charles F. Burroughs of such bond, with surety or sureties, to be approved by the Clerk of this Court, he will be enlarged and admitted to bail. The Clerk will take as surety any satis-
164 factory guaranty company.

The opinion of the Court in dismissing the petition and discharging the writ of *habeas corpus* is made part of the record herein and will be copied by the Clerk in the transcript on appeal.

NATHAN GOFF,
U. S. Circuit Judge.

July 14, 1906.

Appearance Bond.

Filed July 14th, 1906.

In the Circuit Court of the United States for the Eastern District of Virginia.

In the Matter of the Petition of CHARLES F. BURROUGHS for Writs of *Habeas Corpus* and Certiorari.

CHARLES F. BURROUGHS, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

We, as principal, and American Surety Company of New York a guaranty and surety company, organized and existing under the laws of the State of New York, with power and authority to become surety for principals in appearance bonds, jointly and severally acknowledge ourselves to owe and to be bound to the United States of America in the penal sum of Five Thousand Dollars ($5,000.00), severally to be made and levied of our goods, chattels, lands and tenements, if default be made herein.

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The condition of this obligation is as follows: Whereas the said Charles F. Burroughs, being detained in the custody of Morgan Treat, United States Marshal for the Eastern District of Virginia, under commitment and warrant of removal to the Circuit Court of the United States for the Middle District of Tennessee, granted by the Honorable Edmund Waddill, Jr., Judge of the District Court for the Eastern District of Virginia, presented his petition for and sued out a writ of *habeas corpus* from the Circuit Court of the United States for the Eastern District of Virginia, and the said writ of *habeas corpus* duly issued to the said Treat, Marshal, and he made his return thereto; and the said matter of *habeas corpus* came on for hearing before the said Circuit Court of the United States for the Eastern District of Virginia, on the 14th day of July, 1906, when by order thereof the said petition was dismissed and the said writ of *habeas corpus* discharged, and the said Charles F. Burroughs remanded to the custody of the said Morgan Treat, Marshal, to be proceeded with as provided by law; and

Whereas, from the said final order dismissing the said petition and writ of *habeas corpus*, the said Charles F. Burroughs prayed an appeal to the Supreme Court of the United States, which was granted and said appeal perfected; and

Whereas, the said Circuit Court of the United States allow- said appeal, ordered that pending said appeal the said Charles F. Burroughs upon the execution of a bond in the penal sum of Five Thousand Dollars ($5,000.00), conditioned as by said order was provided, might be enlarged and admitted to bail;

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Now, therefore, in compliance therewith, and in order to be so enlarged, the said Charles F. Burroughs as principal, and the said American Surety Company of New York, as surety, execute this bond upon the condition that, if the said Charles F. Burroughs shall duly personally appear in and before the Circuit Court of the United States for the Eastern District of Virginia, then and there to answer the exigency and determination of said appeal, and personally abide the final decision and determination of the said Supreme Court of the United States and of the said Circuit Court of the United States, upon the mandate of the said Supreme Court of the United States, and obey and abide the orders of said Circuit Court of the United States, and not depart without leave upon the conditions aforesaid, and upon the entry of said orders upon said appeal, then and in that event this bond or obligation shall be void; but otherwise it shall be and remain in full force and effect.

In witness whereof, the said Charles F. Burroughs as principal, and the said American Surety Company of New York as surety, the said surety being represented by and through Robert Le Masurier, its duly authorized agent and attorney, have hereunto on this 14th day of July, 1906, set their hands.

CHARLES F. BURROUGHS. [SEAL.]

[Seal of American Surety Company.]

AMERICAN SURETY COMPANY OF NEW YORK,
By ROB'T LE MASURIER, *Agent.*

Signed, sealed and delivered in the presence of
JOSEPH P. BRADY, *Clerk.*

167 *Notice of Appeal.*

Filed July 14th, 1906.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of CHARLES F. BURROUGHS for Writs of *Habeas Corpus* and Certiorari.

CHARLES F. BURROUGHS, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia; JOSEPH P. BRADY, Deputy Clerk of the District Court of the United States for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

SIRS: Please take notice that Charles F. Burroughs petitioner above named hereby appeals to the Supreme Court of the United States from the final order made and entered on the 14th day of

July, 1906, by the Honorable Nathan Goff, Judge of the Circuit Court of the United States, Fourth Judicial Circuit of Virginia, discharging his application for writs of *habeas corpus* and certiorari and from each and every part of said order.

Dated at the City of Richmond, State of Virginia, on the 14th day of July, 1906.

Respectfully,

JOHN J. VERTRESS,
JAMES C. BRADFORD,
JOHN S. MILLER,
Attorneys for Petitioner and Appellant.

168 *Petition for Appeal.*

Filed July 14th, 1906.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of CHARLES F. BURROUGHS for Writs of *Habeas Corpus* and Certiorari.

CHARLES F. BURROUGHS, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

The petition of the above named petitioner, Charles F. Burroughs, for an order allowing an appeal to the Supreme Court of the United States from the final order in the above styled cause, discharging the writs of *habeas corpus* and certiorari in this cause and remanding petitioner to the custody of the said Morgan Treat, United States Marshal.

Charles F. Burroughs, the petitioner and appellant above named, feeling himself aggrieved by the final order heretofore made and entered by this Court in this cause on the 14th day of July, 1906, whereby it was ordered that his petition for a writ of *habeas corpus*, directed to said Morgan Treat, United States Marshal, in and for the said District of Virginia, and his writ of certiorari, directed to Hon. Edmund Waddill, Jr., United States District Judge for said
169 District, commanding him to return all the proceedings, warrants, depositions, examinations, commitments and record of all proceedings against your petitioner to the Circuit Court of the United States, were, after the same had been duly granted and return made thereon by this Honorable Court, discharged, and petitioner was by said order remanded to the custody of said Morgan Treat, United States Marshal, as aforesaid.

Now come, Jno. J. Vertress and Jas. C. Bradford, his attorneys

and counsel, praying this court for an order allowing your petitioner to prosecute an appeal from said final order of the United States Circuit Court to the Supreme Court of the United States, and according to the laws of the United States in that behalf made.

Your petitioner is advised by his counsel that *in* the proceedings referred to in the petition for writs of *habeas corpus* and certiorari, and the said order discharging the same have infringed the constitutional rights of your petitioner and that the commitment of your petitioner and the restraint of his person referred to in said petition and under said order is without authority of law and that the said United States District Judge acting as United States Commissioner, before whom your petitioner was arraigned, as set forth in said petition hereinbefore referred to had no jurisdiction to either require bail of petitioner or to commit petitioner in default thereof, and your petitioner desires in good faith to submit the constitutional questions and other questions involved to the Supreme Court of the United States for their determination.

And your petitioner will ever pray, etc.

JOHN J. VERTRESS,
JAMES C. BRADFORD,
JOHN S. MILLER,
Attorneys for Petitioner and of Counsel.

170 UNITED STATES OF AMERICA, *Eastern District of Virginia:*

Charles F. Burroughs, being duly sworn on his oath, deposes and says that he is the petitioner above named, that the foregoing petition is true of his own knowledge, except as to those matters which are therein stated on his information and belief, and as to those matters, he believes them to be true.

Sworn to before me this 14th day of July, 1906.

JOSEPH P. BRADY,
Clerk of the United States Circuit Court,
Eastern District of Virginia.

Assignment of Errors.

Filed July 14th, 1906.

In the Supreme Court of the United States.

In the Matter of the Petition of CHARLES F. BURROUGHS for Writs of *Habeas Corpus* and Certiorari.

CHARLES F. BURROUGHS, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

171 The petitioner, Charles F. Burroughs, by John J. Vertress and Jas. C. Bradford and John S. Miller, his counsel in connection with his petition of appeal herein, entered herein,

to the Supreme Court of the United States, from the final order made and entered in the United States Circuit Court of the Fourth Judicial Circuit in and for the Eastern District of Virginia, discharging the writs of *Habeas Corpus* and certiorari and remanding petitioner to the custody of the said Morgan Treat, Marshal, *and* makes and files the following assignment of errors:

1. The court erred in discharging the petitioner's writs of *Habeas Corpus* and Certiorari and remanding him to the custody of the United States Marshal.

2. In refusing to grant the prayer of said writs.

3. In refusing to discharge said petitioner.

4. In holding that the restraint of the petitioner's liberty is legal.

5. In holding that the restraint of your petitioner is not in violation of his substantial rights.

6. In holding that said alleged indictment or any count thereof stated an offence against the laws of the United States.

7. In holding that the alleged indictment, or any count thereof was sufficient upon which to base a warrant of removal.

8. In holding that there was sufficient evidence of probable cause.

9. In holding that the warrant of removal made by the United States District Judge for the Eastern District of Virginia was issued upon the finding of probable cause; and in not holding that said order & warrant of removal were unauthorized & void because said District Judge refused to receive or hear any evidence offered by petitioner.

10. In holding that the alleged indictment with proof of
172 identity was conclusive evidence of probable cause.

11. In holding that upon the introduction in evidence of the alleged indictment with proof of identity that the defendant, your petitioner, was not entitled to introduce evidence offered by him and in refusing to hear or receive any evidence offered by him to show that the alleged offence, charged in said indictment and in each count thereof had not been committed by him in the State of Tennessee, in which state the indictment was found and in so holding, violating Article V and Article VI of the Amendments to the Constitution of the United States in that he was deprived of his liberty without due process of law.

12. In failing to hold that your petitioner is deprived of his liberty without due process of law in violation of Article V of the Amendments to the Constitution of the United States, in that said District Judge refused to hear or receive any evidence offered by your petitioner in that the complaint and evidence referred to herein, which were the sole authority for the petitioner's arrest and commitment as aforesaid failed to charge the petitioner with any crime against the laws of the United States.

13. In failing to hold that the petitioner's detention was in violation of Article V of the amendments to the Constitution of the United States in that the said United States District Judge, sitting as United States Commissioner and the United States District Judge has such jurisdiction to order the arrest and commitment of your

petitioner, and that your petitioner is held to answer for a crime without any sufficient or valid indictment of a grand jury.

14. In failing to hold that restraint of your petitioner is in violation of Article IV of the Amendments to the Constitution of the United States, because it appears from the indictment upon
173 which the warrant in this case was issued that in was wholly void.

15. In failing to hold — the restraint of your petitioner is in violation of the provisions of Article IV of the amendments to the Constitution of the United States for the reasons particularly specified in his petition for a writ of *habeas corpus.*

16. In holding that a warrant of removal should issue for the reason that the proceedings conclusively show, by the indictment that the venue for the facts alleged in the indictment is not and was not in the Middle District of the State of Tennessee or in the State of Tennessee.

17. In failing to hold that the restraint of your petitioner is in violation of the provisions of Article VI of the amendments to the constitution of the United States for the reason that upon the proof offered to be made and rejected by the United States District Judge, sitting as a commissioner, and the United States District Judge and this Honorable Court, sitting upon the hearing of the petition of *habeas corpus,* and by the averments of said petition which were not controverted, it was conclusively shown that the offences charged in the indictment were not committed in the Middle District of the State of Tennessee or in the State of Tennessee, and that he could not be lawfully tried by a jury of the State of Tennessee and of the Middle District of Tennessee where said indictment was found.

18. In holding that the warrant of removal was properly issued, as the record and proceedings conclusively show that the alleged offence, complained of in the indictment and the several counts thereof, did not occur within the Middle District of the State of Tennessee, or in the State of Tennessee, and that your pe-
174 titioner did not conspire to commit any offence within the State of Tennessee, or in the Middle District thereof.

19. In holding that your petitioner was lawfully in the custody of said Morgan Treat, United States Marshal in and for the Eastern District of Virginia, and was lawfully deprived of his liberty by him by due process of law.

20. For other errors appearing on the record, by reason whereof, the petitioner prays that the said order, discharging said writs of *Habeas Corpus* and Certiorari be reversed and the petitioner discharged from custody.

JOHN J. VERTRESS,
JAMES C. BRADFORD,
JOHN S. MILLER,
Attorneys for Petitioner and Appellant.

Appeal Bond.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of CHARLES F. BURROUGHS for Writs of *Habeas Corpus* and Certiorari.

CHARLES F. BURROUGHS, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

175 Know all men by these presents, that, we, Charles F. Burroughs and James G. Tinsley his surety, are held and firmly bound unto the United States of America, in the full and just sum of Five hundred dollars to be paid to the United States, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this 14th day of July, 1906.

Whereas, lately, to-wit; on the 14th day of July, 1906, at the Circuit Court of the United States, in and for the Fourth Judicial Circuit, Eastern District of Virginia, in a proceeding therein pending, an order was entered discharging the writs of *habeas corpus* and certiorari, of the above named petitioner in the above mentioned proceeding and said petitioner having duly obtained an appeal from the said order to the Supreme Court of the United States and filed a copy thereof in the Clerk's office of said Circuit Court to review the same,

Now, the Condition of the Above Obligation, is such, that if the said petitioner Charles F. Burroughs, shall prosecute said appeal to effect and shall answer all costs if he should fail to make said appeal good, then this obligation to be void; else to remain in full force and effect.

CHARLES F. BURROUGHS. [SEAL.]
JAMES G. TINSLEY. [SEAL.]

Sealed, and delivered, and taken and acknowledged, this 14th day of July, 1906, before me,

JOSEPH P. BRADY, *Clerk.*

UNITED STATES OF AMERICA,
Eastern District of Virginia, To wit:

176 James G. Tinsley being duly sworn says that he is worth more than the sum of Five Hundred Dollars, over and above all his just debts and liabilities.

Sworn to before me this 14th day of July, 1906.

JOSEPH P. BRADY, *Clerk.*

Citation.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of CHARLES F. BURROUGHS for Writs of *Habeas Corpus* and Certiorari.

CHARLES F. BURROUGHS, Appellant.

versus

MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia; Jos. P. BRADY, Deputy Clerk of the District Court of the United States for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Judge L. L. Lewis, United States District Attorney for the Eastern District of Virginia; Jos. P. Brady, Clerk of the United States Circuit Court for the Eastern District of Virginia; Morgan Treat, United States Marshal in and for the Eastern District of Virginia; Hon. Edmund
177 Waddill, Jr., United States District Judge for the Eastern District of Virginia, and Jos. P. Brady, Deputy Clerk of the United States District Court for the Eastern District of Virginia:

You are cited and admonished to be and appear at the Supreme Court of the United States at the City of Washington, within thirty days from the date of this writ, pursuant to an appeal duly allowed by the Circuit Court for the Fourth Judicial Circuit, Eastern District of Virginia and filed in the Clerk's Office of said Court on the 14th day of July, 1906, in the cause entitled, in the manner of the petition of Charles F. Burroughs for writs of *habeas corpus* and certiorari, Charles F. Burroughs, appellant, *versus,* Morgan Treat United States Marshal in and for the Eastern District of Virginia, Jos. P. Brady, Deputy Clerk of the District Court of the United States in and for said Eastern District of Virginia, and Hon. Edmund Waddill, Jr., United States District Judge in and for said Eastern District of Virginia, Appellees, to show cause, if any, why the final order of said Circuit Court, rendered against the appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Hon. Nathan Goff, Judge of the United States Circuit Court, this 14th day of July, A. D., 1906.

NATHAN GOFF,
Judge of the Circuit Court of the United States.

Acceptance of Service by United States District Judge.

Legal service of the within Citation is hereby acknowledged this 21st July, 1906.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

178 *Marshal's Return.*

Executed this 23rd day of July 1906, by delivering in person in the City of Richmond, Va., a true copy of the within citation to the following named persons viz: L. L. Lewis United States District Attorney for the Eastern District of Virginia, Joseph P. Brady Clerk of the United States Circuit Court for the Eastern District of Virginia, Joseph P. Brady Deputy Clerk of the United States District Court for the Eastern District of Virginia.

MORGAN TREAT,
United States Marshal.

Further executed this 23rd day of July 1906, by delivering in person in the City of Richmond, Va. to Morgan Treat United States Marshal for the Eastern District of Virginia, a true copy of this citation.

MORGAN TREAT,
United States Marshal,
By M. J. ENRIGHT,
Office Deputy Marshal.

179 *Order Transmitting Record.*

And thereupon, it is ordered by the Court here that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the Supreme Court of the United States of America, and the same is transmitted accordingly.

Teste:

JOSEPH P. BRADY,
Clerk United States Circuit Court.

Clerk's Certificate.

THE UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

I, Joseph P. Brady, Clerk of the Circuit Court of the United States for the Eastern District of Virginia, do hereby certify that the foregoing is a full and true transcript of the record and proceedings of the said Circuit Court, together with all things thereunto relating, in the therein entitled cause.

In testimony whereof, I hereunto set my hand and affix the seal of the said Circuit Court of the United States for the Eastern District of Virginia, at Richmond, this 10th day of August, A. D. 1906.

[Seal United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Endorsed on cover: File No. 20,343. E. Virginia C. C. U. S. Term No. 378. Charles F. Burroughs, appellant, *vs.* Morgan Treat, United States marshal in and for the eastern district of Virginia, *et al.* Filed August 14, 1906. File No. 20,343.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 379.

CHARLES H. McDOWELL, APPELLANT,

vs.

MORGAN TREAT, UNITED STATES MARSHAL IN AND FOR THE EASTERN DISTRICT OF VIRGINIA, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

FILED AUGUST 14, 1906.

(20,344.)

(20,344.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906.

No. 379.

CHARLES H. McDOWELL, APPELLANT,

vs.

MORGAN TREAT, UNITED STATES MARSHAL IN AND FOR THE EASTERN DISTRICT OF VIRGINIA, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 10, 1906.

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a In the Supreme Court of the United States.

In re Petition of CHARLES H. MACDOWELL for Writs of *Habeas Corpus* and Certiorari.

CHARLES H. MACDOWELL, Petitioner & Appellant,

vs.

MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia; Jos. P. BRADY, Deputy Clerk of the District Court of the United States for the Eastern District of Virginia, and Hon. EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents & Appellees.

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Judge L. L. Lewis, United States District Attorney for the eastern District of Virginia; Jos. P. Brady, Clerk of the United States Circuit Court for the eastern district of Virginia; Morgan Treat, United States Marshal in and for the eastern District of Virginia; Hon. Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia, and Jos. P. Brady, Deputy Clerk of the United States District Court for the eastern District of Virginia:

You are cited and admonished to be and appear at the Supreme Court of the United States at the City of Washington, within thirty days from the date of this writ, pursuant to an appeal duly allowed by the Circuit Court for the Fourth Judicial Circuit, Eastern District of Virginia, and filed in the Clerk's office of said Court on the 14th day of July, 1906, in the cause entitled, in the matter of the b petition of Charles H. MacDowell for writs of *habeas corpus* and certiorari, Charles H. MacDowell, appellant, *versus* Morgan Treat, United States Marshall in and for the eastern District of Virginia, Jos. P. Brady, Deputy Clerk of the District Court of the United States in and for said eastern District of Virginia, and Hon. Edmund Waddill, Jr., United States District Judge, in and for said Eastern District of Virginia, Appellees, to show cause, if any, why the final order of said Circuit Court, rendered against the appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Hon. Nathan Goff, Judge of the United States Circuit Court, this 14th day of July, A. D., 1906.

NATHAN GOFF,
Judge of the Circuit Court of the United States.

JAMES J. VERTRESS.
JOHN C. BRADFORD.
JOHN S. MILLER.

c Legal service of the within citation is hereby acknowledged this 21st July, 1906.

EDMUND WADDILL, JR.,
U. S. Dis. Judge.

Executed this 23rd day of July 1906, by delivering in person in the City of Richmond, Va. a true copy of the within citation to the following named persons viz: L. L. Lewis United States District Attorney for the Eastern District of Virginia, Joseph P. Brady Clerk of the United States Circuit Court for the Eastern District of Virginia, Joseph P. Brady Deputy Clerk of the United States District Court for the Eastern District of Virginia.

MORGAN TREAT,
United States Marshal.

Marshal's Fees for service $6.00.

Further executed this 23rd day of July 1906 by delivering in person in the City of Richmond, Va. to Morgan Treat United States Marshal for the Eastern District of Virginia, a true copy of the within citation.

MORGAN TREAT,
United States Marshal,
By M. J. ENRIGHT,
Office Deputy Marshal.

Marshal's Fees for service $2.00.

d [Endorsed:] No. —. Circuit Court of the U. S., Eastern District of Virginia. In the matter of the Petition of Chas. H. MacDowell for Writs of *Habeas Corpus* and Certiorari. Chas. H. MacDowell, Appellant, *vs.* Morgan Treat, United States Marshal &c., *et als.*, Appellees. Citation. Filed this 14th day of July, 1906. Joseph P. Brady, Clerk.

1 *Transcript of Record.*

THE UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

At a Circuit Court of the United States for the Eastern District of Virginia, begun and held at the Court Rooms in the Custom House, in the City of Richmond, Virginia, on the first Monday in April, being the second day of the same month, in the year of our Lord one thousand, nine hundred and six.

Present: The Honorable Nathan Goff, Judge of the Circuit Court of the United States for the Eastern District of Virginia.

Among other were the following proceedings, to-wit:

In the Matter of the Petition of CHARLES H. McDOWELL for Writs of *Habeas Corpus* and Certiorari.

CHARLES H. McDOWELL, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

2 *Petition for Writs of Habeas Corpus and Certiorari.*

Filed July 14th, 1906.

In the Circuit Court of the United States for the Eastern District of Virginia.

CHARLES H. McDOWELL, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

To the Honorable the Judges of the Circuit Court of the United States for the Eastern District of Virginia:

The Petition and Complaint of Charles H. McDowell respectfully shows to the Court:

1.

That your petitioner is a citizen of the United States, and is not a citizen and resident of the Middle District of Tennessee and is unlawfully imprisoned and restrained of his liberty by Morgan Treat, United States Marshal for the Eastern District of Virginia, in the City of Richmond, and County of Henrico, in said District. That your petitioner is held by said Marshal under color and claim of authority of the United States, by virtue of a warrant for removal claimed to have been issued under section 1014 of the Revised Statutes of the United States, dated July 14th, 1906, signed by the Honorable Edmund Waddill, Jr., Judge of the District Court of the United States for the Eastern District of Virginia, and has been committed and is detained only under and by virtue of said warrant, and not by virtue of any judgment, decree or final order of any court.

3 2.

On the 14th day of July, 1906, at the said City of Richmond, in said District, complaint in writing signed and sworn to by Morgan Treat, United States Marshal in and for said District, a copy of which is hereto attached, marked "Exhibit A," and made part hereof, was presented to the Honorable Edmund Waddill, Jr.,

Judge of the District Court of the United States for the said District, in and by which it was averred that he, the said Morgan Treat, United States Marshal, had good cause to believe and did believe that your petitioner has been indicted by the grand jury of the Circuit Court of the United States in and for the Middle District of Tennessee, for that your petitioner on the 8th day of July, 1903, and during the period of time from that date until and on the first day of September, 1905, and being during said period Manager and Agent of Armour & Company, a corporation existing under the laws of the State of Illinois, did, in said Middle District of Tennessee, unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section 1 of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and that on the 8th day of July, 1903, at and within the County of Davidson in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, your petitioner did unlawfully conspire with divers other persons and corporations to commit an offense against the United States, to-wit: The offense of engaging in a combination in restraint of trade and commerce among the several States of the United States, all as more fully set out in an indictment filed in the said Circuit Court of the United States in and for the Middle District of Tennessee on May 25th, 1906, a certi-
4 fied copy of which indictment said complaint states was thereto attached and made a part of said complaint, and in and by which said complaint, said complainant did, therefore, charge that your petitioner did commit the said offense against the United States in the manner and form as set forth in said indictment, and did furthermore aver in said complaint upon information and belief that your petitioner is now believed to be within the Eastern District of Virginia.

And said complainant, said Morgan Treat, United States Marshal, in and by said complaint did therefore pray that your petitioner might be arrested, imprisoned, and removed or bailed, as the case might be, for trial before said Circuit Court of the United States for the Middle District of Tennessee, and further dealt with according to law; all of which will appear from the said complaint, a copy of which is hereto attached as aforesaid, reference thereto being hereby made for greater certainty. And that thereupon, to-wit, on the said 10th day of July, 1906, a warrant for his arrest was issued by the Honorable Edmund Waddill, Jr., Judge as aforesaid, upon the aforesaid complaint, which came to the hands of the said Morgan Treat, Marshal as aforesaid, and he, in obedience thereto, arrested your petitioner and brought him before the said the Honorable Edmund Waddill, Jr., Judge as aforesaid, and made return of said warrant, endorsed thereon, and a copy of said warrant with the endorsement thereon is hereto attached marked "Exhibit B" and made a part hereof.

3.

That thereupon then and there, the United States Attorney in and for the said Eastern District of Virginia, for and on behalf of the United States, did offer and introduce in evidence to and before the said Judge, in support of the averments of the said complaint of said Morgan Treat, United States Marshal, a certified copy of the said indictment mentioned and referred to in the said complaint.
5 A certified copy of said indictment so offered and introduced in evidence is hereto attached, marked "Exhibit C," and made a part hereof, and the identity of your petitioner with and as the Charles H. McDowell mentioned and referred to in said indictment as one of the defendants therein, having been then and there admitted by your petitioner, the Government, the United States of America, introduced or offered no other or further proof or evidence in support of the said complaint or of the averments therein, but rested its case upon the said hearing of the said complaint before the said Judge.

4.

That thereupon, then and there, your petitioner, by his counsel, proceeded to offer, and offered, proof and evidence by witnesses then and there present then and there to prove and show that your petitioner did not within the said Middle District of Tennessee, on the 8th day of July, 1903, or during the period between the 8th day of July, 1903 and the first day of September, 1905, or at any other time, engaged in the said alleged conspiracies in the said indictment mentioned, or any or either of them, or at any time or at any place, join in or assent to the said alleged conspiracies, engaged in or entered upon in said Middle District of Tennessee, or any or either of them, or at any time or at any place do any act in furtherance of, or to effect the object of said alleged conspiracies engaged in in said Middle District of Tennessee, or any or either of them. Thereupon, then and there, the counsel for the Government, upon the said hearing, did object to the introduction on the behalf of your petitioner of the said evidence or any evidence or proof tending to contradict or controvert the respective averments, or any or either of them in the said indictment and in the respective counts thereof, viz., that your petitioner did engage in the said alleged conspiracy in said indictment mentioned and referred to, in the said Middle District of Tennessee, in manner and form as in the said indictment in that behalf aver-ed, or to contradict or controvert or disprove any of the aver-
6 ments in the said indictment contained,—on the ground, then and there stated, that upon the said hearing of said complaint, the said certified copy of the said indictment was conclusive evidence of every fact therein averred to sustain and prove upon the said hearing the said complaint of the said Morgan Treat, United States Marshal, and the averments thereof, and the probable cause of the commission by your petitioner of the said supposed offenses in the said indictment mentioned and of any and every of them in the manner and form as in the said indictment aver-ed, and

in that behalf, your petitioner then and there took the witness stand and demanded to be sworn as a witness in his own behalf, but the counsel for the Government objected, and the objection was by said Judge sustained, and he was not permitted to be sworn or to testify.

5.

That thereupon, then and there, your petitioner by his counsel stated to the Judge that he would prove, and then and there his said counsel offered to prove by your petitioner as a witness the following facts, which facts are true, that is to say:

That said alleged conspiracies which are in the said indictment mentioned were not, nor was any or either of them, engaged in, at or within said Middle District of Tennessee.

That said Charles H. McDowell did not, at or within said Middle District of Tennessee engage in, or do or take part in any act matter or thing in or about or with respect to the engaging in, promoting or furthering the said alleged conspiracies or any or either of them, or to effect the object thereof.

That said Charles H. McDowell did not, at any time or at any place join in, assent to, or know of said alleged conspiracies or any or either of them, engaged in or entered upon in said Middle District of Tennessee, or any conspiracy which had been or was
7 engaged in at or within said Middle District of Tennessee, or do any act, matter or thing in or about the formation, engaging in, furthering or promoting or to effect the object of any such conspiracy as is hereinabove referred to.

That if said alleged conspiracies which are in said indictment mentioned or referred to, or any or either of them, ever were or was engaged in at or within the Middle District of Tennessee by said other defendants or any or either of them or by any corporations or persons, the said Charles H. McDowell did not, at any time or at any place engage in or join, or assent to, or know of the same or do any act in or about the engaging in or promotion thereof or to effect or toward effecting the object of the same.

6.

That the United States Attorney, on behalf of the Government, then and there objected to the introduction or reception by the said Judge of the said evidence so offered on behalf of your petitioner, and to each and every part thereof, on the ground hereinbefore stated, which objection was then and there sustained by the Court, on the ground that the said certified copy of the said indictment so introduced on behalf of the Government, the identity of your petitioner as aforesaid being admitted by your petitioner as aforesaid, was conclusive evidence of the existence of every fact stated in the indictment, including the averments that the conspiracies alleged in the said indictment were engaged in in the Middle District of Tennessee, and that therefore said evidence or any evidence offered by and on behalf of your petitioner to controvert, contradict or disprove the averments of the said indictment in that behalf, or any or either of them, was incompetent and inadmis-

sible; and the said Judge, then and there, on the grounds
8 aforesaid, excluded and refused to receive said evidence so offered on behalf of your petitioner, or any part thereof, to which ruling of the Judge, your petitioner then and there, by his counsel, duly excepted.

7.

That thereupon the said Judge, upon the complaint and upon the evidence so introduced for and on behalf of the Government as aforesaid, made and signed a certain order reciting his said rulings as aforesaid and ordering as in said order appears, which said order is as follows:

THE UNITED STATES OF AMERICA,
Eastern District of Virginia:

THE UNITED STATES
vs.
CHARLES H. McDOWELL.

This is an application under the provisions of section 1014 of the United States Revised Statutes for a warrant for the removal of Charles H. McDowell to the Middle District of Tennessee and comes before me as follows:

The District Attorney for this District, together with Mr. E. T. Sanford, Counsel for the United States, presented to me, a verified complaint of Morgan Treat, United States Marshal for this District, with the certified copy of an indictment filed on May 25th, 1906, in the Circuit Court of the United States for the Middle District of Tennessee in the case of the United States *vs.* Virginia-Carolina Chemical Company and other defendants, including among such defendants the said Charles H. McDowell.

Said complaint and copy of said indictment are made parts of this order.

Upon the exhibition of this indictment and affidavit and the *ex parte* motion of the counsel for the United States, I made an order for the arrest of said Charles H. McDowell and his production before me.

9 This order was duly executed by the said Marshal who arrested the said Charles H. McDowell and brought him before me in Richmond on this 14th day of July, 1906, as shown by his return. When the accused was so brought before me it was moved by the counsel for the United States that inasmuch as the indictment charged offenses against the United States triable in the Circuit Court of said United States for the Middle District of Tenness-, and the identity of the defendant was admitted, that an order be forthwith made for the commitment of said Charles H. McDowell for trial before said Circuit Court.

It was further stated and agreed that while the defendant Charles H. McDowell was not a resident of the Eastern District of Virginia, he was present in this District with his counsel, and that so far as the jurisdiction in the Eastern District of Virginia was concerned,

he consented to these proceedings being instituted here, and to their being conducted here with the same force and effect, and in like manner as if he were a resident of the Eastern District of Virginia; and furthermore waived the previous issuance of any bench warrant for his arrest, from the Circuit Court of the Middle District of Tennessee, if the same were necessary.

This motion was made upon the certified copy of the indictment without any further testimony, the identity of the party arrested and brought before me with the Charles H. McDowell mentioned in the indictment being admitted.

And thereupon the defendant Charles H. McDowell offered himself as witness in his own behalf, and being about to be sworn, the United States, by its Counsel, thereupon objected to the witness being sworn, or to any testimony being given in rebuttal of the indictment in these proceedings, on the ground that the identity of the defendant being admitted, inasmuch as the indictment on its face charges offenses against the United
10 States committed and triable in the jurisdiction in which the defendant stands indicted, no evidence is admissible here to impeach the indictment, and the order of commitment should be made without other proof.

The defendant's counsel thereupon offered to prove by the defendant, and other witnesses then and there present, that the Circuit Court for the Middle District of Tennessee had no jurisdiction over the person of said defendant touching the offense charged in said indictment, in that defendant and said other witnesses would, if permitted, testify that said alleged conspiracies which are in the said indictment mentioned were not, nor was any or either of them, engaged in, at or within said Middle District of Tennessee.

That said Charles H. McDowell did not, at or within said Middle District of Tennessee engage in, or do or take part in any act matter or thing in or about or with respect to the engaging in, promoting or furthering the said alleged conspiracies or any or either of them, or to effect the object thereof.

That said Charles H. McDowell did not, at any time or any place join in, assent to, or know of said alleged conspiracies or any or either of them, engaged in or entered upon in said Middle District of Tennessee, or any conspiracy which had been or was engaged in at or within said Middle District of Tennessee, or do any act, matter or thing in or about the formation, engaging in, furthering or promoting or to effect the object of any such conspiracy as is hereinabove referred to.

That if said alleged conspiracies which are in said indictment mentioned or referred to, or any or either of them, ever were or was engaged in at or within the Middle District of Tennessee by said other defendants or any or either of them or by any corporations or persons, the said Charles H. McDowell did not, at any time
11 or at any place engage in or join, or assent to, or know of the same or do any act in or about the engaging in or promotion thereof or to effect or towards effecting the object of the same.

Nor has defendant done, or performed, or been engaged in, or a

party to the same or any of them in any other place or places at any other time or times whatsoever.

Thereupon Counsel for the Government renewed its objections as aforesaid.

After hearing counsel on both sides the Court announced its conclusions as follows:—

"The conclusion reached by the Court is that in a proceeding for the arrest and the removal of persons charged with a violation of the laws of the United States pursuant to section 1014 of the Revised Statutes of the United States, before a United States District Judge, sitting in the State of Virginia, in which State there no longer exists the right of a preliminary examination upon a crime charged prior to the trial upon the merits, when said Judge is called upon to act as well in the matter of the apprehension of such persons, as in their removal to the jurisdiction in which they have been indicted, that upon the Government's presentation of a sufficient indictment regularly found by a grand jury in a court of the United States, properly charging the commission of an offense within the district in which such indictment is found, coupled with proof of the identity of the person indicted, it is its duty to properly bail such person for appearance before the court in which he is indicted, or cause him to be removed thereto."

Therefore it was ordered that the testimony offered is inadmissible, and will not be received, and I therefore made the following order:

12 UNITED STATES OF AMERICA,
Eastern District of Virginia, set:

The within named Charles H. McDowell having been brought before me, and identified; and it appearing by a duly authenticated copy of an indictment that he stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," for violation of section one of the act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States, it is ordered that the said Charles H. McDowell give bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial before said Court under the said indictment; or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee, to be there dealt with according to law.

Richmond, Va., July 14th, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

And after said order had been made and the defendant declined to give bond, the Counsel for the United States moved that the warrant do issue directed to the Marshal of this District for the imprison-

ment and removal of the said Charles H. McDowell to the Middle District of Tennessee, and his delivery to the custody of the United States Marshal of that District.

On such motion counsel for the said Charles H. McDowell objected and again offered the said Charles H. McDowell as a
13 witness, together with the other witnesses here-before referred to, to establish the same matters and facts as hereinbefore stated with regard to the objection to the order for the commitment of the said Charles H. McDowell which testimony was again offered and was again objected to by the counsel for the United States on the same grounds above set forth, and on the further ground that these matters could not now be inquired of in this stage of the proceedings, and was again excluded by the Court, to all of which counsel for the said Charles H. McDowell then and there duly excepted and had the exceptions noted and entered.

EDMUND WADDILL, JR., *Judge.*

I therefore issued a warrant directed to the Marshal as follows:

Warrant of Imprisonment and Removal.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The President of the United States to the United States Marshal of the Eastern District of Virginia, Greeting:

Whereas it has been made to appear that Charles H. McDowell stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled: "The United States *vs.* Virginia-Carolina Chemical Company *et al.,*" for violation of section one of the act of Congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States; and whereas the said Charles H. McDowell having been brought before me, and identified; and a certified copy of said indictment furnishing probable cause to believe him guilty as therein charged, and whereas it was thereupon
14 ordered by me that said defendant give bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial under said indictment, or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee to be there dealt with according to law; and the said defendant having failed and refused to give bail as required, therefore;

You are hereby commanded in the name and by the authority of the said United States to imprison the said Charles H. McDowell in accordance with the law, and that with all convenient speed you remove him hence to the said Middle District of Tennessee and there

surrender him to the Marshal of that District, there to be dealt with according to law.

Richmond, Va., July 14th, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

Richmond, Va., July 14th, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

8.

Your petitioner further says that he is advised, and he charges and submits, that under and by virtue of Clause 3, of Section 2, of Article 3, of the Constitution of the United States, and of the Sixth Amendment to the said Constitution, your petitioner is entitled to be tried and can only be indicted and tried for any alleged offenses against the laws of the United States, in the State and District in which the offense, which the indictment charges, was committed; that the said supposed offenses in the said indictment mentioned and charged, were not, nor was any or either of them, committed in the said Middle District of Tennessee; that none of the alleged acts, transactions, matters or things which are in the said indictment mentioned or referred to as being and constituting the supposed engaging by this defendant in the said alleged conspiracies in the said indictment referred to, or any or either of them, were done or held or took place within the said Middle District of Tennessee, and no alleged act, transaction, matter or thing, in the said indictment mentioned or referred to as being the doing by this defendant of an act to effect the object of said conspiracy was done or held or took place within the Middle District of Tennessee;

That said alleged conspiracies which are in the said indictment mentioned were not, nor was any or either of them, engaged in, at or within said Middle District of Tennessee.

That said Charles H. McDowell did not, at or within said Middle District of Tennessee engage in, or do or take part in any act matter or thing in or about or with respect to the engaging in, promoting or furthering the said alleged conspiracies or any or either of them, or to effect the object thereof.

That said Charles H. McDowell did not, at any time or at any place join in, assent to, or know of said alleged conspiracies or any or either of them, engaged in or entered upon in said Middle District of Tennessee, or any conspiracy which had been or was engaged in at or within said Middle District of Tennessee, or do any act, matter or thing in or about the formation, engaging in, furthering or promoting or to effect the object of any such conspiracy as is hereinabove referred to.

That if said alleged conspiracies which are in said indictment

mentioned or referred to, or any or either of them, ever were or was engaged in at or within the Middle District of Tennessee by said other defendants or any or either of them or by any corporations or persons, the said Charles H. McDowell did not, at any time or at any place engage in or join, or assent to, or know of the same or do any act in or about the engaging in or promotion thereof or
16 to effect or towards effecting the object of the same, or do any act in pursuance of the said alleged conspiracies in the said indictment mentioned, or any or either of them, in furtherance of the said alleged conspiracies in said indictment mentioned, or any or either of them, or to effect the object of the same, or as an act on the part of your petitioner of engaging in the same.

9.

That thereupon, the United States Attorney moved the commitment of your petitioner to the Marshal of the said District for removal to the Middle District of Tennessee for trial upon the indictment in the United States Circuit Court for said District, and the said Attorney for the United States thereupon made a motion before the Honorable Edmund Waddill, Jr., Judge, for the issuance of a warrant for the removal of your petitioner to the Middle District of Tennessee for trial as aforesaid in the United States Circuit Court for said District upon the said indictment, and the said motion was allowed, and said warrant was in pursuance thereof issued by the said Judge, and a copy thereof is embraced in the order of the said Judge hereinbefore recited as and made a part hereof. That thereupon the said Marshal of the Eastern District of Virginia, to whom the said warrant was directed, took your petitioner into custody upon the said warrant and now holds your petitioner thereunder and threatens to take and remove your petitioner to the Middle District of Tennessee, as directed by the said warrant and will do so, unless your Honor shall issue the writ of *Habeas Corpus* herein prayed for. Your petitioner further says that in case your petitioner is removed under the said warrant to the said Middle District of Tennessee for trial upon said indictment and is there held for trial and tried upon said indictment, your petitioner will not be tried within the District in which the said alleged offenses charged in the said indictment were committed, as required
17 by the Sixth Amendment to the Constitution of the United States, and by Clause 3, of Section 2, of Article 3 of said Constitution, and will be tried in violation of his rights under said provisions of the said Constitution. Your petitioner further says that he is advised, and he charges that the said indictment does not charge the commission by your petitioner of any offense against the laws of the United States, and that same is in that behalf insufficient and void.

10.

That the imprisonment and detention of your petitioner is without authority of law, and the said proceedings before said United

States District Judge are illegal and the said warrants of removal was illegally issued and in violation of Article 3, Section 2, of the Federal Constitution, and of the Sixth Amendment to the said Constitution; and that then and there by the said rulings of the said District Judge, in the exclusion of the said evidence and in holding that the said certified copy of the indictment was conclusive evidence as aforesaid, and in refusing to permit your petitioner to introduce any evidence on his behalf, as aforesaid, your petitioner was deprived of rights secured to him by the said provisions of the said Constitution and by section 1014 of the Revised Statutes, and was and is by said Morgan Treat, United States Marshal, deprived of his liberty without due process of law.

Wherefore your petitioner prays that a writ of *Habeas Corpus* be issued, directed to the said United States Marshal of the Eastern District of Virginia, who has your petitioner in custody, demanding him to bring the body of your petitioner before this Court forthwith; and further that a writ of Certiorari be directed to the said Honorable Edmund Waddill, Jr., Judge as aforesaid, commanding that he return all proceedings against this petitioner to this court
18 forthwith, for such action as may be proper in the premises.

CHARLES H. McDOWELL.

JOHN J. VERTRESS,
JAMES C. BRADFORD &
JOHN S. MILLER,
Attorneys for Petitioner & of Counsel.

UNITED STATES OF AMERICA,
Eastern District of Virginia, County of Henrico, ss:

Charles H. McDowell being duly sworn, deposes and says that he has read the foregoing petition, and knows the contents thereof, and that the same is in all respects true.

CHARLES H. McDOWELL.

Sworn and subscribed to before me this 14th day of July, 1906.

JOSEPH P. BRADY,
Clerk U. S. Circuit Court.

19 EXHIBIT A.

UNITED STATES OF AMERICA, *Eastern District of Virginia, set:*

On this 14th day of July, A. D. 1906, at the City of Richmond, in the said District, before the Honorable Edmund Waddill, Jr., Judge of the District Court of the United States of America for the said District, comes Morgan Treat, United States Marshal in and for the said District, and upon his oath complains and says: that he has good

cause to believe and does firmly believe that Charles H. McDowell stands indicted by the grand jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said Charles H. McDowell on the eighth day of July in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, being during said period Manager and Agent of Armour and Company, a corporation existing under and by the laws of the State of Illinois, did in the said Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said Charles H. McDowell did unlawfully conspire with divers other persons and corporations to commit an offense against the United States, to-wit, the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States, all as more fully set out in an indictment filed in the said Circuit Court of the United States in and for the Middle District of Tennessee on May 25, 1906, in cause No. 963, entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al.*, a certified copy of which indictment is hereto attached and made a part of this complaint; and complainant therefore charges that the said Charles H. McDowell did commit the said offenses against the United States in manner and form as set forth in said indictment.

Complainant furthermore avers upon information and belief that said Charles H. McDowell is now believed to be within the Eastern District of Virginia.

Wherefore this complainant prays that the said Charles H. McDowell may be arrested and imprisoned and removed or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee, and further dealt with according to law.

MORGAN TREAT, *Marshal.*

Subscribed and sworn to before me by the above named Morgan Treat the day and year first above written.

EDMUND WADDILL, JR.,
U. S. District Judge.

Richmond, Va., July 14th, 1906.

21 EXHIBIT B.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

To the Marshal of the Eastern District of Virginia, Greeting:

Whereas complaint in writing on oath, has been made to me charging that Charles H. McDowell stands indicted by the grand jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said Charles H. McDowell on the eighth day of July, in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, did in the Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said Charles H. McDowell did unlawfully conspire with divers other persons and corporations to commit an offense against the United States, to-wit, the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States: and application has been made to me that the said Charles H. McDowell may be arrested and imprisoned and removed or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee;

Now, therefore, you are hereby commanded to arrest the said Charles H. McDowell, if he be found within your said District, and bring him forthwith before me at my Chambers in Richmond, in order that he may be dealt with according to law.

EDMUND WADDILL, JR.,
District Judge.

Richmond, July 14th, 1906.

22 Pursuant to the within writ, I have taken the defendant Charles H. MacDowell into custody and now have him before Hon. Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia.

MORGAN TREAT,
United States Marshal.

July 14th, 1906.

23 EXHIBIT C.

In the Circuit Court of the United States of America for the Middle District of Tennessee, of the April Term, in the Year of Our Lord Nineteen Hundred and Six.

MIDDLE DISTRICT OF TENNESSEE, *sct:*

The grand jurors for the United States of America, inquiring for the Middle District of Tennessee, upon their oath present, that before and on the eighth day of July, in the year of our Lord nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year of our Lord nineteen hundred and five, the following named corporations, respectively organized and existing under and authorized by the laws of the several States and of the foreign country here named in connection with them, and hereafter in this indictment called corporation defendants, to wit, the Virginia-Carolina Chemical Company, of New Jersey, Armour and Company, of Illinois, the Acme Manufacturing Company, of North Carolina, the Alabama Chemical Company, of New Jersey, the Anderson Phosphate & Oil Company, of South Carolina, the Ashepoo Fertilizer Company, of South Carolina, the Blackshear Manufacturing Company, of Georgia, the Etiwan Fertilizer Company, of South Carolina, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, The Furman Farm Improvement Company, of Georgia, the Goulding Fertilizer Company, Limited, of Great Britain and Ireland, The Goulding Fertilizer Company, of Florida, the Gulfport Cotton Oil, Fertilizer & Manufacturing Company, of Georgia, the Home Mixture Guano Company, of Georgia, the Jackson Fertilizer Company, of Mississippi, the Marietta Fertilizer Company, of Georgia, the Meridian Fertilizer Factory, of Mississippi, the National Fertilizer Company, of Tennessee, the New Orleans Acid and Fertilizer Company, of New Jersey, the Old Dominion Guano Company, of Georgia, the Planters Chemical Company, of Alabama, the
24 Read Phosphate Company, of West Virginia, the F. S. Royster Guano Company, of Virginia, the Savannah Guano Company, of Georgia, the Southern States Phosphate and Fertilizer Company, of Georgia, the Standard Chemical & Oil Company, of Alabama, the Standard Guano and Chemical Manufacturing Company, of Louisiana, Swift & Company, of Illinois, the Tennessee Chemical Company, of Tennessee, and the Tennessee Valley Fertilizer Company, of Alabama, and certain firms, to wit, the firm of A. D. Adair and McCarty Brothers and the firm of Wilcox, Ives & Company, did carry on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereafter in this indictment called the States of the conspiracy, as wholesale dealers in complete and alkaline fertilizers and in acid phosphates, nitrates, and potash salts suitable for fertilizers, which then were useful and valuable

articles of merchandise, indispensable for use on the soil of the said States of the conspiracy in order that the staple crops of those States might be raised therefrom; that the following named persons, hereafter in this indictment called individual defendants, to wit, Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, of the said Virginia-Carolina Chemical Company, and J. Rice Smith, agent and manager of the said Virginia-Carolina Chemical Company, and president of the Georgia Chemical Works hereinafter mentioned, Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, Fred G. Brown, president and treasurer of the said Anderson Phosphate & Oil Company, Frank Burbidge, president, and William J. McCormack, treasurer, of the said Etiwan Fertilizer Company, George Braden, president of the said Federal Chemical Company, of Delaware, and also of the said Federal Chemical Company, of Kentucky, Augustus D. Adair and James D. McCarty, officers and agents of the said Furman Farm Improvement Company and members of the said firm of A. D. Adair and McCarty Brothers, William DeC. Kessler, secretary and treasurer of the said Goulding Fertilizer Company, Limited, James G. Tinsley, president of the said Marietta Fertilizer Company and vice-president of the said Tennessee Chemical Company, William D. Rhea, general manager of the said National Fertilizer Company, William L. Peel, president of the said Old Dominion Guano Company, Abram C. Read, vice-president and general manager, and Isaac Mayo Read, agent, of the said Read Phosphate Company, Frank S. Royster, president, and Charles F. Burroughs, vice-president, of the said F. S. Royster Guano Company, A. J. Ives, whose Christian name is to the said grand jurors unknown, secretary and treasurer of the said Savannah Guano Company and a member of the said firm of Wilcox, Ives & Company, T. Porter Fleming, vice-president of the said Southern States Phosphate and Fertilizer Company, and T. Garland Tinsley, president and treasurer of the said Tennessee Chemical Company, in their said several capacities as officers, managers, agents, and attorneys of the said corporation defendants and members of the said firms, and on behalf of those corporations and firms, during the period of time in this indictment first aforesaid, did carry on the business aforesaid; that in so carrying on the said business the said defendants, that is to say, the said corporation and individual defendants, did sell and deliver large quantities of the said merchandise within the limits of the said States of the conspiracy from the respective places of business of the said corporation defendants and the said firms, located at different points within those States, to retail dealers in and consumers of such merchandise, in such States respectively, and did also ship large quanti-es of the same from their respective places of business, located in the said States of the conspiracy and also in the States of Virginia, Illinois, and Kentucky, into and through other of the said States than those in which their said places of business were located; that in so carrying on the said busi-

ness and shipping the said merchandise from one of the said States into and through another or others thereof, the said defendants, during the period aforesaid, were engaged in trade and commerce among the States of this Union within the meaning of the Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in so carrying on the said business, trade and commerce, the said Virginia-Carolina Chemical Company and the said Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, and J. Rice Smith, agent and manager, of the said Virginia-Carolina Chemical Company, did make use of and operate a portion of their said business, trade and commerce through each of certain other corporations, to wit, the American Fertilizer Company, of Virginia, the Birmingham Fertilizer Company, of Alabama, the Coweta Fertilizer Company, of Georgia, the Georgia Chemical Works, of Georgia, the Navassa Guano Company, of North Carolina, of either the whole or a majority of the capital stock of which said corporations respectively the said Virginia-Carolina Chemical Company was the owner;

26 that in so carrying on the said business, trade and commerce, the said Armour and Company and the said Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, did make use of and operate all of their said business, trade and commerce through a certain other corporation called the Tuscarora Fertilizer Company, of New Jersey, and a certain trade name, to wit, the trade name of Armour Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Furman Farm Improvement Company and the said firm of A. D. Adair and McCarty Brothers did make use of and operate a portion of their said business trade, and commerce under the trade name of Chickamauga Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Federal Chemical Company, of Delaware, and the said Federal Chemical Company of Kentucky, did make use of, and operate a portion of their said business, trade and commerce through, the names of Century Phosphate Company, Fox Chemical Company, Branch Globe Fertilizer Company, Branch and Tennessee Phosphate Company; that in so carrying on the said business, trade and commerce, the said National Fertilizer Company did make use of, and operate a portion of its said business, trade and commerce through, the corporate name of American Guano Company and the trade name of Nashville Guano Company; that in so carrying on the said business, trade and commerce, the said Read Phosphate Company did make use of, and operate a portion of its said business, trade and commerce through the corporate name of Empire Guano Company; that in so carrying on the said business, trade and commerce, the said F. S. Royster Guano Company did make use of, and operate a portion of its said business, trade and commerce through the trade name of Atlantic Chemical Company and the corporate name of Columbia Guano Company; that in so carrying on the said business, trade and

commerce, the said Swift and Company did make use of, and operate the whole of its said business, trade and commerce through, the trade name of Swift Fertilizer Works; and that in so carrying on the said business, trade and commerce, the said Tennessee Chemical Company did make use of, and operate a portion of its said business, trade and commerce through, the trade name of Continental Fertilizer Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that of the total volume of such business, trade and commerce then so being carried on by the said defendants and their competitors, the said defendants together had and controlled the principal part, that is to say, ninety per centum thereof; and
27 that because the said corporation defendants and the said firms were in fact separate and distinct from each other, they should have conducted their interstate trade and commerce strictly in competition with each other, during the said period, and then would have so conducted the same but for the unlawful conspiracy in restraint of the said business, trade and commerce in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, at and within the said Middle District of Tennessee, in violation of the provisions of said section one of the said Act of Congress, unlawfully did knowingly engage in a conspiracy in restraint of the said business, trade and commerce, so then being carried on by them in the manner aforesaid, whereby the said business, trade and commerce was restrained in the several ways and by the several means now here set forth and described, that is to say:

Competition as to the prices at which the said merchandise was sold and delivered by the said corporation defendants and the said firms in the said States of the conspiracy, which before the period of time in this indictment first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was prevented and destroyed by the said defendant from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them styled "current, reasonable market prices," for the said merchandise so sold and delivered by the said corporation defendants and the said firms in those States, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so fixed and caused to be fixed; which said uniform and non-competitive prices were prices greatly in excess of the prices which but for the said unlawful conspiracy would at such times have prevailed for the said merchandise in the said business, trade and commerce, and were prices therefore unreasonable, and were a tax on the people of the said States of the said conspiracy amounting to a large sum of money, to wit, four million dollars, annually during the continuance of the same.

For and on account of such quantity of the said merchandise as was sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts allotted and caused

to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and
28 delivered in excess, was, by the corporation defendants and firms so selling and delivering the same, paid into a common fund, held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, compensated, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as sold and delivered less than the amounts so allotted to them respectively, so it was not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy that each of the said corporation defendants and of the said firms also paid into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment to be the absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm, in disposing of its said allotment in carrying on the said business, trade and commerce, on its part faithfully should exercise every reasonable effort and due business diligence to maintain the prices so fixed and caused to be fixed as aforesaid and pay into the said fund the sum accruing to the same on account of its said excess sales, in which case an equal amount was returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also made uniform and non-competitive as between all of the said corporation defendants and the said firms, in the said business, trade and commerce, among the said States of the conspiracy.

As a convenient intermediary and common agent between the said corporation defendants and the said firms, respectively and as a means of securing their co-operation in carrying out the said unlawful conspiracy, the said defendants made use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company, Limited, was also allowed and required to collect, hold, use and distribute the said fund
29 arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that, in pursuance of the said unlawful conspiracy,

and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of September, in the year nineteen hundred and three, during the period of time aforesaid, at and within the City of New York, in the State of New York, unlawfully did knowingly deposit with the Continental Trust Company, of the said City of New York, the sum of twenty-six thousand dollars, in connection with the purchase *of* by the said trust company on behalf of the said Virginia-Carolina Chemical Company, and in the name of one Montrose Stuart, a clerk in the office of the said trust company, of twenty-six hundred shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Samuel T. Morgan, on the seventh day of October, in the same year nineteen hundred and three, and during the period of time aforesaid, at and within the said city of New York, in the State of New York, unlawfully did deliver to the said William DeC. Kessler, Vice-President of the said Colonial Development Company, Limited, three checks drawn by the said Virginia-Carolina Chemical Company, one upon the National City Bank, of New York City aforesaid, for eighty thousand dollars, another on the Bank of America, of New York City aforesaid, for fifty thousand dollars, and the other on the National Park Bank, of New York City aforesaid, for thirty-five thousand and four hundred and sixty-eight dollars, aggregating one hundred and sixty-five thousand and four hundred and sixty-eight dollars, as and for a payment, by the said Virginia-Carolina Chemical Company, to the said Colonial Development Company, Limited, of twenty cents a ton on its allotment under the said unlawful conspiracy; he the said Samuel T. Morgan, when and where he so as aforesaid delivered the said checks to the said William DeC. Kessler, well knowing the character and purpose of the same, and well knowing that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as acts on their parts respectively of engaging in the same, the said Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, on the seventeenth day of September, in the year nineteen hundred and three, and during the period aforesaid, at the said City of New York, in the said State of New York, unlawfully did meet together to discuss and further the object of the said unlawful conspiracy; they the said Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred G. Brown,

Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, when and where they so as aforesaid met together, each well knowing the character and purpose of the said meeting, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank E. Wilcox, on the first day of November, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did deliver to one W. W. Perkins, Secretary of the said American Fertilizing Company, a certain document, too voluminous to be here set forth, stating certain prices and terms of sale, fixed in pursuance of the said unlawful conspiracy, for the said fetilizer merchandise, in the States of North Carolina, South Carolina, Georgia, Florida, Alabama and Tennessee, for the spring season of the year nineteen hundred and four; he the said Frank E. Wilcox at the time and place when and where he so as aforesaid delivered the said document to the said W. W. Perkins, well knowing the character of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, and during the period of time aforesaid, at the town of Decherd, in the said Middle District of Tennessee, by and through one
31 F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, and during the period aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, and during the period of time aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at the City of Nashville, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, a certain notice of shipment, partly written and partly printed, in the words and figures following, that is to say:

"The Armour Fertilizer Works
Owned and operated by
Armour & Company.

Duplicate.
To be Mailed with Bill of
Lading to Customer.

Prudential Building,
Atlanta, Ga.

No. 612
March 10", 1905.

32 We have this day shipped from Nashville, Tenn. storage

To Bramlitt Hdw Co.
Corinth, Miss.

Charge to S. D. Bramlitt. Address same.

No. Bags.	Weight of bags.	Brand.	Tons.
400	100	King Cotton 8.2.2	20

Order No. 4613.

Bill of lading herewith. Invoice will be mailed from Chicago.
Above quantities shipped 3 10 1905. Freight Terms.....
Car No. 13619. Via L. & N.
Charges prepaid $48.00.

THE ARMOUR FERTILIZER WORKS,
Per ALEX. LESLIE."

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Austin B. Carpenter, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Assistant Secretary of the said Colonial Development Company, unlawfully did sign his name, to wit, "A. B. Carpenter, Asst. Secy." on the face of a certain stock certificate, to wit, certificate No 28, showing the ownership by one Thomas M. Green of fifty-one shares of the capital stock of the said Colonial Development Company; he the said Austin B. Carpenter, at the time and
33 place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his said act to be done in pursuance and to effect the object of the said conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles H. MacDowell, on the twelfth day of January, in the year nineteen hundred and five, and during the period of time aforesaid, at and within the city of Chicago, in the State of Illinois, unlawfully did sign his name, to-wit, "C. H. MacDowell," under the name of the Armour Fertilizer Works, and after the word "by" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Armour and Company, under the trade name of "Armour Fertilizer Works," offered to furnish and deliver at Corinth, in the State of Mississippi to one S. D. Bramlitt, twenty tons of the fertilizer merchandise aforesaid; he the said Charles H. MacDowell, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of gaging in the same, the said Alabama Chemical Company, on the the first day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the city of Wilmington, in the State of North Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of six hundred and twenty

dollars for sixty-two shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Alabama Chemical Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Montgomery, in the State of Alabama, unlawfully did knowingly deliver its certain check drawn upon the Merchants and Planters-Farley National Bank, Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of William DeC. Kessler, as payment for forty-two shares of the capital stock of the said Colonial Development Company, Limited;

34 And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Anderson Phosphate and Oil Company, on the twenty-ninth day of August, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Anderson, in the State of South Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of five hundred and eighty dollars for fifty-eight shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly buy from the Carolina Savings Bank, Charleston, South Carolina, a draft upon the Citizens National Bank, of New York City, for the payment of the sum of seven thousand nine hundred and forty-nine dollars and forty-three cents to the order of one Frank E. Taylor, Vice-President and General Manager of the said Ashepoo Fertilizer Company;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and *and* during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly cause the said Frank E. Taylor to endorse the check last above mentioned payable to the order of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Blackshear Manufacturing Company, on the seventeenth day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Blackshear, in the State of Georgia, unlawfully did knowingly deliver to the Atlantic Coast Line Railroad Company six tons of the fertilizer merchandise aforesaid, consigned and to be shipped

to the firm of E. J. Blume & Company, at Live Oak, in the State of Florida;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Etiwan Fertilizer Company, on the fourteenth day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Cairo, in the State of Georgia, by and through one P. H. Seabrook, its agent, unlawfully did knowingly offer and agree to furnish and deliver to the firm of Wight Brothers, of Cairo aforesaid, thirty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank Burbidge, on the first day of July, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Charleston, in the State of South Carolina, having then and there in his hands a certain check, dated the thirtieth day of June, in the same year nineteen hundred and four, drawn by the said Alabama Chemical Company upon the Continental National Bank of Chicago, for the payment of eleven hundred and forty-two dollars and ninety-seven cents to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Pay to order of People's National Bank, Colonial Development Co., Ltd., F. Burbidge, Pres."; he the said Frank Burbidge then and there, to wit, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William J. McCormack, on the ninth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, having then and there in his hands a certain check dated the fifth day of September, in the same year, drawn by the said New Orleans Acid & Fertilizer Company, upon the Louisiana National Bank of New Orleans, for the payment of seven hundred and fifty dollars to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Colonial Developm't Co., Frank Burbidge, Sec. & Treas., per Wm. J. McCormack"; he the said William J. McCormack, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of en-

gaging in the same, the said Federal Chemical Company, of
36 Delaware, on the twenty-eighth day of December, in the year
of our Lord nineteen hundred and three, and during the period of time aforesaid, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the said State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four,
and during the period of time aforesaid, at Springfield afore-
37 said, in the said Middle District of Tennessee, unlawfully did
knowingly cause to be delivered, to the said firm of Fiser, Orndorff & Williams, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Goulding Fertilizer Company, Limited, on the twenty-fifth day of November, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the

town of Cullman, in the State of Alabama, by and through one W. E. Craig, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one John Sutterer, at Cullman aforesaid, three hundred and seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the sixth day of September, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Pensacola, in the State of Florida, having then and there in his hands a certain check, dated the fifth day of September, in the same year nineteen hundred and three, drawn by the said Alabama Chemical Company upon Merchandise Merchants and Planters-Farley National Bank of Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of W. DeC. Kessler, unlawfully did sign his name, to wit, "W. DeC. Kessler," upon the back of the said check next below the written words "Pay to the order of Colonial Development Co."; he the said William DeC. Kessler then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the back of the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the said fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Vice-President of the said Colonial Development Company, unlawfully did sign his name, to wit, "W. DeC. Kessler, V. P." on the face of the said stock certificate in the name of Thomas M. Green; he the said William DeC. Kessler, at the time and place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his act to be done in pursuance and to effect the object of
38 the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Gulfport Cotton Oil Fertilizer and Manufacturing Company, on the twenty-seventh day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-four hundred dollars for and in respect of twelve thousand tons of the fertilizer merchandise aforesaid, allotted to the said Gulfport Cotton Oil, Fertilizer and Manufacturing Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Home Mixture Guano Company, on a day in the year nineteen hundred and three to the said grand jurors

unknown, and during the period of time aforesaid, at and within the City of Columbus, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Jackson Fertilizer Company, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Jackson, in the State of Mississippi, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Marietta Fertilizer Company, on the twenty-first day of July, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by and through one L. W. Reeves, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one James A. Boyd, at Jonesboro aforesaid, seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said James G. Tinsley, on the
39 third day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Nashville, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley; he the said James G. Tinsley, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Meridian Fertilizer Factory, on the seventh day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Cullman, in the State of Alabama, by its agent E. L. Robbins, unlawfully did knowingly offer to furnish to C. A. Steifelmeyer one hundred and fifty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said National Fertilizer Company, on the

second day of March, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge; he the said William D. Rhea, then and there, to wit, at the time and place when and where he so directed and required the said E. W. Connell to sign his name as aforesaid to the said check, well knowing the nature and contents of the said check, and that his said direction and requirement were in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid; he the said William D. Rhea then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the said document, well knowing the character of the same, and well knowing his said act to be one done in pursuance of and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said New Orleans Acid & Fertilizer Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did

knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars for seventy-five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Old Dominion Guano Company, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-six hundred and twenty dollars, for and
41 in respect of thirteen thousand one hundred tons of the fertilizer merchandise aforesaid, allotted to the said Old Dominion Guano Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William L. Peel, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did sign his name, to wit, "W. L. Peel, Prest.," to a certain check, to wit, a check drawn by the Maddox-Rucker Banking Company upon the National Park Bank, New York, for the payment of twenty-six hundred and twenty dollars to the order of the said Colonial Development Company, Limited; he the said William L. Peel, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Planters Chemical Company, on the thirtieth day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Talladega, in the State of Alabama, unlawfully did knowingly pay the said Colonial Development Company, Limited, the sum of fifty dollars for five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Read Phosphate Company, on the fifth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Hartselle, in the State of Alabama, unlawfully did knowingly offer to sell and deliver to one S. E. Stewart, at that place, forty to fifty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and

three, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too
42 voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid; he the said Abram C. Read, then and there, to wit, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved, Nashville Tenn. Dec. 6 1904," and above the word "Manager," upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof, offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid; he the said Abram C. Read then and there, to wit, at the time and place when and where he so as aforesaid signed his name to the last mentioned document, well knowing the character and contents of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said F. S. Royster Guano Company, on the thirtieth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine thousand three hundred and fourteen dollars and seventy-four cents, on account of such merchandise sold and delivered by the said F. S. Royster Guano Company in excess of its allotment under the aforesaid unlawful conspiracy;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles F. Burroughs, on the twenty-fifth day of March, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did sign

his name, to wit, "C. F. Burroughs," under the word "countersigned" and above the words "Vice-President" upon the face of a certain document, partly written and partly printed, too voluminous to be here set forth in full, wherein and whereby the said F. S. Royster Guano Company and he the said Charles F. Burroughs, as Vice-President thereof, offered to sell to one J. W. Carter, and to deliver to him at Maxton, in the State of North Carolina, ten tons of the fertilizer merchandise aforesaid; he the said Charles F. Burroughs, at the time and place when and where he so as aforesaid signed his name to the said document, well knowing the character and contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Savannah Guano Company, on the second day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did knowingly pay to the said Frank Burbidge the sum of nine hundred and forty dollars for ninety-four shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said A. J. Ives, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did sign his name, to wit, "A. J. Ives, Secty. & Treas." to a certain check, to wit, a check drawn by the Savannah Guano Company upon the Merchants National Bank, Savannah, Georgia, for the payment of three thousand one hundred and forty dollars to the order of New York Exchange; he the said A. J. Ives, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Southern States Phosphate and Fertilizer Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of the time afore-
44 said, at and within the City of Augusta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine hundred and sixty dollars for ninety-six shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Chemical and Oil Company, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the

town of Troy, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand dollars for and in respect of one-half of forty thousand tons of the fertilizer merchandise aforesaid allotted to the said Standard Chemical and Oil Company, as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Guano and Chemical Manufacturing Company, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand seven hundred and seventy-four dollars and seventy-seven cents as a partial payment for and in respect of the fertilizer merchandise aforesaid, allotted to the said Standard Guano and Chemical Manufacturing Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Swift & Company, on the first day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by its agent, J. Z. Elliott, unlawfully did knowingly offer to furnish to one W. P. Diehl thirty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

And that, further in pursuance of the said unlawful con-
45 spiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes & Bro., at Oxford, Alabama, a certain letter of the tenor following, to wit:

T. G. Tinsley, Pres't & Treas. Allen Hardison, Sec'y.

Tennessee Chemical Company, Manufacturers and Importers of Ox Fertilizers.

NASHVILLE, TENN., *May* 17–'05.

Messrs. D. P. Haynes & Bro., Oxford, Ala.

DEAR SIRS: I am in receipt of your favor of the 16th and beg to state we could not allow any discount further than the 5 % for cash

settlement. We will be glad to have you settle in cash on this basis if you desire to do so, but are sorry to state we are not in a position to offer you any further discount.

Yours truly, T. G. TINSLEY, *President;*

he the said T. Garland Tinsley then and there, to wit, at the time and place when and where he so as aforesaid caused the said letter to be written and sent as aforesaid, well knowing that the same was so written and sent in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part in engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Company, James G. Tinsley. By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee
46 Chemical Company upon the Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley; he the said T. Garland Tinsley, at the same time and place when and where he so as aforesaid wrote the said endorsement on the back of the said check, well knowing the contents of the same, and that his said act was done in pursuance of and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Valley Fertilizer Company, on the second day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Florence, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars, as a partial payment for and in respect of fertilizer merchandise, aforesaid, allotted to the said Tennessee Valley Fertilizer Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on their parts respectively, of engaging in the same, the said Frank Burbidge, Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson, during the period of time aforesaid, at the City of New York, in the State of New York, the City of Washington, in the District of Columbia, Old Point Comfort and Hot Springs, in the State of Virginia, St. Augustine, in the State of Florida, and French Lick Springs, in the State of Indiana, unlawfully did as officers, directors and attorney of the said Colonial Development Company, Limited,

meet together for the purpose of discussing and attending to the affairs of the said Colonial Development Company, Limited; they the said Frank Burbidge, Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson when and where they so met together aforesaid, well knowing the purpose of such meetings, and well knowing their acts in the premises to be acts in pursuance and to effect the object of the said unlawful conspiracy, and that the same were done as acts on their parts respectively of engaging in the said unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, during the period of time aforesaid, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form aforesaid, unlawfully did engage in a conspiracy in
47 restraint of trade and commerce among the several States;
Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

SECOND COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the first count described, and were so engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord, nineteen hundred and three at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the grand jurors unknown, and engage in a conspiracy, among themselves and with such other unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid; which said unlawful conspiracy in this count mentioned then and there was a conspiracy for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described; that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the

said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing and causing to be fixed, uniform and non-competitive prices, by them to be styled "current, reasonable market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such times prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

48

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum ther-of during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be the absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its excess

sales, in which case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of pay-
49 ment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their cooperation in carrying out the said unlawful conspiracy, the said defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, and as being acts on the part of the said corporation and individual defendants respectively of engaging in that conspiracy, are now here in this count charged to be acts by the same corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned, and to have been acts on the part of the said corporation and individual defendants respectively of engaging in the last-named unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a con-
50 spiracy in restraint of trade and commerce among the several States; against the peace and dignity of the said United

States, and contrary to the form of the statute of the same in such case made and provided.

THIRD COUNT.

And the grand jurors, aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the said first count described, and so were engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the said United States, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the said United States, to wit, the offense of engaging in a combination, among themselves and with such other unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid, which said unlawful conspiracy in this count mentioned then and there was a conspiracy to engage in a combination for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described, that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and com-
51 merce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them to be styled "current, reasonable market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be

prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such times prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful combination and ninety per centum thereof during the second year; it being a further element of the said unlawful combination in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on the said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the
52 same on account of its excess sales, in which case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their cooperation in carrying out the said unlawful combination, the said defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and

the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful combination; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, are now here in this count charged to be acts by the said corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy to commit an offense against the said United States: Against
53 the peace and dignity of the said United States; Against the peace and dignity of the said United States, and contrary to the form of the statute in such case made and provided.

Fourth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names

and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State, but by way of and partly through another State, and were severally engaged both in local com-
54 merce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the aforesaid business and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section one of the said Act of Congress, approved July 2, 1890, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, The Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company of Delaware, the Federal Chemical

Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count,
55 to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly engage in a conspiracy in restraint of commerce among the several States, to wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, whereby the said commerce was restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise which were maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the period of such unlawful conspiracy, and greatly in excess of those prices which would have otherwise prevailed in the said States during the period of such unlawful conspiracy, and were therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby earnest money was given to secure the maintenance of such prices and compensation was made to those losing volume of business by reason of maintaining such prices, that is to say:

There was from time to time allotted to each of said corporation defendants and firms an amount of tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms paid into a common fund the sum

of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sums becoming due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which faithfully maintained such uniform and non-competitive prices and failed to make sales
56 and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but sold and delivered through itself and its subsidiary companies a minimum amount thereof required as a guarantee of good faith, received from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid fell short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies made such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, as a penalty upon such excess sales, paid into such common fund like amounts per ton on the said respective kinds of fertilizers, divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means whereby said unlawful conspiracy was effected, a corporation of Ontario, Canada, whose stock was apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was the common fund aforesaid into which was paid the earnest money and penalties on excess sales aforesaid, and from which was paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which the same was operated and directed.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that within the period aforesaid of said unlawful conspiracy in this count of this indictment mentioned, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and did do and perform such acts as acts on their respective parts of engaging in the said unlawful conspiracy in this count of this indictment mentioned, and that each of such defendants at the time and place when and where such defendants did and performed the acts hereinafter so set forth in connection with such defendant respectively, then

and there well knew the character of such act and that such
57 act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, and as an act on the part of such defendant in engaging in the same, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year, nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the
58 tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chatta-
59 nooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the

County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit,
60 "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Ten-

nessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec. 6 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abraham C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P.
61 Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said corporation and individual defendants, during the period of time aforesaid, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

Fifth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the

first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and
62 through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the several States of the conspiracy and the said States of Virginia, Illinois and Kentucy, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, approved July 2, 1890, the said corporation defendants named in the said first count, to wit, the Virginia-Caro-
63 lina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, and engage in a conspiracy among themselves and with such other unknown corporations and persons, in restraint of commerce among the several States, to-wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, by which unlawful conspiracy said commerce was to be restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the

various points of delivery in the said States of the conspiracy,
64 which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy, and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices, that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to make sales and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose
65 treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary and

common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful conspiracy was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that such act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

66 In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one

Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said consiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company,
67 on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Ten-

nessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle
68 District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his, the said E. W. Connell's name as such Treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fer-

tilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read,"
after the words "Approved—Nashville, Tenn., Dec. 6 1904"
69 and above the word "Manager" upon the face of a certain
other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he, the said Abram C. Read as Manager thereof offer-d to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee

Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

70 SIXTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were

severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress approved July 2, 1890, and entitled "An Act to protect
71 trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and in the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section 5440 of the Revised Statutes of the United States, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William
72 J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Wil-

liam D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the United States, to wit, to engage in a combination in restraint of commerce among the several States, namely, a combination in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, and did then and there so conspire to commit the aforesaid offense by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy, and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices; that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to
73 make sales and deliveries of such merchandise through itself and its subsidiary — amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment,

as aforesaid; and on the other hand, each of said corporation defendants and firms which, through itself and its subsidiary companies, should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful combination was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid, the corporation defendants and individual defendants, hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that such act was done in pur-
74 suance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and

four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at West
75 Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid,

consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchan-
76 dise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Arndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day

and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D.
77 Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to he here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec. 6 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes

and Bro.," at Oxford, Alabama, that certain letter of the date
78 set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley, By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did conspire to commit an offense against the United States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

ABRAM M. TILLMAN,
United States Attorney.

(Endorsed as follows:) No. 963. United States Circuit Court, Middle District of Tennessee. *The United States vs. Virginia-Carolina Chemical Company et als.*

Indictment for violating Act of Congress approved July 2, 1890, and entitled "An Act to Protect Trade and Commerce against unlawful restraints and monopolies," and Section 5440 R. S. U. S.

A True Bill. Robert Q. Stewart, Foreman of the Grand Jury.

Names of Witnesses Sworn and Examined Before the Grand Jury.

J. C. Adams, Henry E. Ahern, Lee Ashcraft, Eugene Atkinson, N. E. Barker, W. F. Barrett, James C. Beck, J. M. Berry, W. W. Bird, L. W. Botts, Clarence Braden, S. D. Bramlitt, A. P. Brantley,
B. D. Brantley, Dewitt Brown, H. C. Brown, Arthur Bussey,
79 Hezekiah Bussey, E. J. Blume, James A. Boyd, William F. Burns, Oscar Bright, J. W. Carter, B. G. Clark, C. W. Comes, E. W. Connell, Charles Earle Currie, R. L. Davis, Joseph Denee, W. P. Diehl, A. M. Dobbs, John V. Dobson, C. H. Drayton, W. L. Dumas, J. B. Duncan, S. Eastland, T. B. Edwards, Culpepper Exum, H. C. Fischer, J. B. Fiser, Albert French, C. A. Gambrill, A. H. George, John E. Gibbs, William Gilchrist, James M. Goldsmith, A. A. Green, E. P. Grice, W. A. Hansel, G. A. Harrington, H. J. Harby, Allen Hardison, L. C. Hayne, J. L. Haynes, D. P. Haynes, R. W. Henderson, P. W. Hendricks, E. R. Hodgson, junior, E. R. Hodgson, senior, J. L. Horn, W. E. Hudson, T. J. Hunt, R. H. John-

ston, T. V. Kessler, E. M. Kirk, Henry Kirn, H. L. Law, Alexander Leslie, J. A. Lindsey, W. Hampton Logan, Harry Luck, John A. Lewis, W. F. McKenzie, Robert F. Maddox, H. W. Malloy, E. R. Manning, H. L. Milligan, J. Allen Moore, M. B. Neece, W. J. Oliver, E. Thomas Orgain, D. B. Osborne, Every M. Paget, W. W. Perkins, Dr. J. D. Plunkett, F. B. Pope, William Price, Charles Rainey, Frederick Rayfield, Isaac W. Read, W. A. Reynolds, I. T. Rhea, W. E. Richards, H. A. Rogers, V. N. Roadstrum, W. G. Sadler, G. W. Sanders, E. M. Sentelle, W. McR. Smith, R. G. Sparrow, J. F. Stackley, C. A. Steifelmeyer, S. E. Stewart, W. B. Stratford, John Sutterer, E. R. Taber, Frank E. Taylor, W. B. Taylor, W. D. Tharin, J. R. Timmerman, J. W. Todd, S. W. Travers, George H. Tucker, E. Van Winkle, J. T. Welch, O. C. Wiley, C. H. Willcox, T. B. Williams, Benjamin L. Willingham, W. S. Wight, E. G. Woodling.

Filed 11:30 A. M., May 25, 1906. H. M. Doak, Clerk, by E. L. Doak, Deputy Clerk. Abram M. Tillman, U. S. Atty.

I, H. M. Doak, Clerk of the Circuit Court of the United States in and for the Middle District of Tennessee, hereby certify that the foregoing is a true, perfect, and complete copy of an indictment filed as thereupon endorsed, etc. In witness whereof I have hereunto signed my name and affixed the seal of said court, at my office, this the 26th day of May, 1906.

[SEAL OF COURT.] H. M. DOAK, *Clerk.*

80 *Order Awarding Writs of Habeas Corpus and Certiorari.*

Filed July 14th, 1906.

In the Matter of the Petition of CHARLES H. MCDOWELL for Writs of *Habeas Corpus* and Certiorari.

CHARLES H. MCDOWELL, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

Let the writ of *habeas corpus*, in due form of law, as prayed for in the within petition be issued directed to Morgan Treat, United States Marshal for the Eastern District of Virginia, commanding him forthwith to make return of said writ and to produce the body of said petitioner, Charles H. McDowell, before this Court, to be dealt with according to law; and that the writ of certiorari as prayed for in said petition be issued and made returnable forthwith.

Richmond, Va., July 14th, 1906.

NATHAN GOFF,
Presiding Circuit Judge, April Term, 1906.

Writ of Habeas Corpus.

81 UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

To Morgan Treat, United States Marshal for the Eastern District of Virginia, or any of his deputies:

We command you that the body of Charles H. McDowell in your custody detained, as it is said, together with the day and cause of his caption and detention, you safely have before our Circuit Court of the United States, within and for the District aforesaid, forthwith, to do and receive all and singular those things which the said Circuit Court of the United States, within and for the District aforesaid, shall then and there consider of him in this behalf; and have you then and there this writ.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond, this 14th day of July, in the year of our Lord one thousand nine hundred and six, and of our Independence the 131st year.

[Seal United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Marshal's Return.

To the Circuit Court of the United States for the Eastern District of Virginia:

Morgan Treat, United States Marshal for the said Eastern District of Virginia, to whom the annexed writ is directed, has now before the court the body of Charles H. McDowell therein named, as thereby commanded. And I certify that the cause of the detention of the said Charles H. McDowell is a warrant directed to me and issued by the Honorable Edmund Waddill, Jr., Judge, of the said
82 Eastern District of Virginia, on July 14, 1906, under the provisions of section 1014 of the Revised Statutes of the United States, commanding the imprisonment and removal of the said Charles H. McDowell to the Middle District of Tennessee for trial in the Circuit Court of the United States for said last mentioned district upon a certain indictment found in said last mentioned court against him, the said Charles H. McDowell and others, a copy of which warrant of removal is set out in the petition of the said Charles H. McDowell herein; and that a full, true and correct statement of all the proceedings before the said Judge upon the application for the arrest and commitment of the said Charles H. McDowell and his removal to said Middle District of Tennessee for trial is contained and set forth in the statement or order of said Judge, a copy of which is set forth in section 7 of the said Charles H. McDowell's petition and in the documents made a part thereof and therein referred to.

Dated the 14th day of July, A. D. 1906.

MORGAN TREAT,
U. S. Marshal for the Eastern District of Virginia.

Writ of Certiorari.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

The President of the United States of America to the Judge of the District Court of the United States for the Eastern District of Virginia:

83 We being informed that there is now pending before you a suit in which the United States of America is plaintiff and Charles H. McDowell is defendant; and we being willing, for certain reasons, that the said case and the record and proceedings therein should be certified by the Judge of the District Court of the United States for the Eastern District of Virginia and removed into the Circuit Court of the United States for the Eastern District of Virginia, sitting at Richmond, Virginia;

We do hereby command you forthwith that you send forthwith to the said Circuit Court of the United States for the Eastern District of Virginia, as aforesaid, the record and proceedings in said case, so that the said Circuit Court of the United States for the Eastern District of Virginia may act thereon as of right and according to law ought to be done.

Witness, The Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond, this 14th day of July, in the year of our Lord one thousand nine hundred and six, and of our Independence the 131st —.

[Seal United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Return of United States District Judge.

The Clerk of the United States District Court is hereby directed to deliver to the Judges of the United States Circuit Court within and for the Eastern District of Virginia the record and proceedings mentioned in the within writ.

Richmond, Va., July 14", 1906.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

84 *Transcript of Proceedings Before Honorable Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia.*

The following proceedings were had before Honorable Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia, at Richmond, Virginia, on the 14th day of July, 1906.

THE UNITED STATES
versus
CHARLES H. MCDOWELL.

Writ of Certiorari.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

The President of the United States of America to the Judge of the District Court of the United States for the Eastern District of Virginia:

We being informed that there is now pending before you a suit in which the United States of America is plaintiff and Charles H. MacDowell is defendant; and we being willing, for certain rea-
85 sons, that the said case and the record and proceedings therein should be certified by the Judge of the District Court of the United States for the Eastern District of Virginia and removed into the Circuit Court of the United States for the Eastern District of Virginia, sitting at Richmond, Virginia.

We do hereby command you forthwith that you send forthwith to the said Circuit Court of the United States for the Eastern District of Virginia, as aforesaid, the record and proceedings in said case, so that the said Circuit Court of the United States for the Eastern District of Virginia may act thereon as of right and according to law ought to be done.

Witness, The Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond, this 14th day of July, in the year of our Lord one thousand nine hundred and six, and of our Independence the 131st year.

[Seal of United States Circuit Court.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Return of United States District Judge.

The Clerk of the United States District Court is hereby directed to deliver to the Judges of the United States Circuit Court within and for the Eastern District of Virginia the record and proceedings mentioned in the within writ.

Richmond, Va., July 14th, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge.

86 *Complaint.*

Filed July 14th, 1906.

UNITED STATES OF AMERICA, *Eastern District of Virginia, act:*

On this 14th day of July, A. D. 1906, at the City of Richmond, in the said District, before the Hon. Edmund Waddill, Jr., Judge

of the District Court of the United States of America for the said [illegible] the said District, and upon his oath complains and says: that he has good cause to believe and does firmly believe that Charles H. MacDowell stands indicted by the Grand Jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said Charles H. MacDowell on the eighth day of July in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, being during said period Manager & Agent of Armour & Company, a corporation existing under and by the laws of the state of Illinois, did in the said Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said Charles H. MacDowell did unlawfully conspire with divers other persons and

87 corporations to commit an offense against the United States, to-wit, the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States, all as more fully set out in an indictment filed in the said Circuit Court of the United States in and for the Middle District of Tennessee on May 25, 1906, in cause No. 963, entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," a certified copy of which indictment is hereto attached and made a part of this complaint; and complainant therefore charges that the said Charles H. MacDowell did commit the said offenses against the United States in manner and form as set forth in said indictment.

Complainant furthermore avers upon information and belief that the said Charles H. MacDowell is now believed to be within the Eastern District of Virginia.

Wherefore this complainant prays that the said Charles H. MacDowell may be arrested and imprisoned and removed or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee, and further dealt with according to law.

MORGAN TREAT, *Marshal.*

Subscribed and sworn to before me by the above named Morgan Treat the day and year first above written.

Richmond, Va., July 14, 1906.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

Certified Copy of Indictment

In the Circuit Court of the United States of America for the Middle District of Tennessee, of the April Term, in the Year of Our Lord Nineteen Hundred and Six.

MIDDLE DISTRICT OF TENNESSEE, *ss:*

The grand jurors for the United States of America, inquiring for the Middle District of Tennessee, upon their oath present, that before and on the eighth day of July, in the year of our Lord nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year of our Lord nineteen hundred and five, the following named corporations, respectively organized and existing under and authorized by the laws of the several States and of the foreign country here named in connection with them, and hereafter in this indictment called corporation defendants, to wit, the Virginia-Carolina Chemical Company, of New Jersey, Armour and Company, of Illinois, the Acme Manufacturing Company, of North Carolina, the Alabama Chemical Company, of New Jersey, the Anderson Phosphate & Oil Company, of South Carolina, the Ashepoo Fertilizer Company, of South Carolina, the Blackshear Manufacturing Company, of Georgia, the Etiwan Fertilizer Company, of South Carolina, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, The Furman Farm Improvement Company, of Georgia, the Goulding Fertilizer Company, Limited, of Great Britain and Ireland, The Goulding Fertilizer Company, of Florida, the Gulfport Cotton Oil, Fertilizer & Manufacturing Company, of Georgia, the Home Mixture Guano Company, of Georgia, the Jackson Fertilizer Company, of Mississippi, the Marietta Fertilizer Company, of Georgia, the Meridian Fertilizer Factory, of Mississippi, the National Fertilizer Company, of Tennessee, the New Orleans Acid and Fertilizer Company, of New Jersey, the Old Dominion Guano Company, of Georgia, the Planters Chemical Company, of Alabama, the Read Phosphate Com-
89 pany, of West Virginia, the F. S. Royster Guano Company, of Virginia, the Savannah Guano Company, of Georgia, the Southern States Phosphate and Fertilizer Company, of Georgia, the Standard Chemical & Oil Company, of Alabama, the Standard Guano and Chemical Manufacturing Company, of Louisiana, Swift & Company, of Illinois, the Tennessee Chemical Company, of Tennessee, and the Tennessee Valley Fertilizer Company, of Alabama, and certain firms, to wit, the firm of A. D. Adair and McCarty Brothers and the firm of Wilcox, Ives & Company, did carry on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereafter in this indictment called the States of the conspiracy, as wholesale dealers in complete and alkaline fertilizers and in acid phosphates, nitrates, and potash salts suitable for fertilizers, which then were useful and valuable articles of merchandise, indispensable for use on the soil of the said States of the conspiracy in order that the staple

crops of those States might be raised therefrom; that the following named persons, hereafter in this indictment called individual defendants, *to wit, Samuel T. Morgan, president*, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, of the said Virginia-Carolina Chemical Company, and J. Rice Smith, agent and manager of the said Virginia-Carolina Chemical Company, and president of the Georgia Chemical Works hereinafter mentioned, Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, Fred G. Brown, president and treasurer of the said Anderson Phosphate & Oil Company, Frank Burbidge, president, and William J. McCormack, treasurer of the said Etiwan Fertilizer Company, George Braden, president of the said Federal Chemical Company, of Delaware, and also of the said Federal Chemical Company, of Kentucky, Augustus D. Adair and James D. McCarty, officers and agents of the said Furman Farm Improvement Company and members of the said firm of A. D. Adair and McCarty Brothers, William DeC. Kessler, secretary and treasurer of the said Goulding Fertilizer Company, Limited, James G. Tinsley, president of the said Marietta Fertilizer Company and vice-president of the said Tennessee Chemical Company, William D. Rhea, general manager of the said National Fertilizer Company, William L. Peel, president of the said Old Dominion Guano Company, Abram C. Read, vice-president and general manager, and Isaac Mayo Read, agent, of the said Read Phosphate Company, Frank S. Royster, president, and Charles F. Burroughs, vice-
90 president, of the said F. S. Royster Guano Company, A. J. Ives, whose Christian name is to the said grand jurors unknown, secretary and treasurer of the said Savannah Guano Company and a member of the said firm of Wilcox, Ives & Company, T. Porter Fleming, vice-president of the said Southern States Phosphate and Fertilizer Company, and T. Garland Tinsley, president and treasurer of the said Tennessee Chemical Company, in their said several capacities as officers, managers, agents, and attorneys of the said corporation defendants and members of the said firms, and on behalf of those corporations and firms, during the period of time in this indictment first aforesaid, did carry on the business aforesaid; that in so carrying on the said business the said defendants, that is to say, the said corporation and individual defendants, did sell and deliver large quantities of the said merchandise within the limits of the said States of the conspiracy from the respective places of business of the said corporation defendants and the said firms, located at different points within those States, to retail dealers in and consumers of such merchandise, in such States respectively, and did also ship large quan-ties of the same from their respective places of business, located in the said States of the conspiracy and also in the States of Virginia, Illinois, and Kentucky, into and through other of the said States than those in which their said places of business were located; that in so carrying on the said business and shipping the said merchandise from one of the said States into and through another or others thereof, the said defendants, during the period

aforesaid, were engaged in trade and commerce among the States of this Union within the meaning of the Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in so carrying on the said business, trade and commerce, the said Virginia-Carolina Chemical Company and the said Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, and J. Rice Smith, agent and manager, of the said Virginia-Carolina Chemical Company, did make use of and operate a portion of their said business, trade and commerce through each of certain other corporations, to wit, the American Fertilizing Company, of Virginia, the Birmingham Fertilizer Company, of Alabama, the Coweta Fertilizer Company of Georgia, the Georgia Chemical Works, of Georgia, the Navassa Guano Company, of North Carolina, of either the whole or a majority of the capital stock of which said corporations respect-
91 ively the said Virginia-Carolina Chemical Company was the owner; that in so carrying on the said business, trade and commerce, the said Armour and Company and the said Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, did make use of and operate all of their said business, trade and commerce through a certain other corporation called the Tuscarora Fertilizer Company, of New Jersey, and a certain trade name, to wit, the trade name of Armour Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Furman Farm Improvement Company and the said firm of A. D. Adair and McCarty Brothers did make use of and operate a portion of their said business trade, and commerce under the trade name of Chickamauga Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Federal Chemical Company, of Delaware, and the said Federal Chemical Company of Kentucky, did make use of, and operate a portion of their said business, trade and commerce through, the names of Century Phosphate Company, Fox Chemical Company, Branch, Globe Fertilizer Company, Branch, and Tennessee Phosphate Company; that in so carrying on the said business, trade and commerce, the said National Fertilizer Company did make use of, and operate a portion of its said business, trade and commerce through, the corporate name of American Guano Company and the trade name of Nashville Guano Company; that in so carrying on the said business, trade and commerce, the said Read Phosphate Company did make use of, and operate a portion of its said business, trade and commerce through the corporate name of Empire Guano Company; that in so carrying on the said business, trade and commerce, the said F. S. Royster Guano Company did make use of, and operate a portion of its said business, trade and commerce through the trade name of Atlantic Chemical Company and the corporate name of Columbia Guano Company; that in so carrying on the said business, trade and commerce, the said Swift and Company did make

use of, and operate the whole of its said business, trade and commerce through, the trade name of Swift Fertilizer Works; and that in so carrying on the said business, trade and commerce, the said Tennessee Chemical Company did make use of, and operate a portion of its said business, trade and commerce through, the trade name of Continental Fertilizer Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that of the total volume of such business, trade and commerce then so being carried on by the said defendants and their competitors, the said defendants together had and controlled
92 the principal part, that is to say, ninety per centum thereof; and that because the said corporation defendants and the said firms were in fact separate and distinct from each other, they should have conducted their interstate trade and commerce strictly in competition with each other, during the said period, and then would have so conducted the same but for the unlawful conspiracy in restraint of the said business, trade and commerce in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, at and within the said Middle District of Tennessee, in violation of the provisions of said section one of the said Act of Congress, unlawfully did knowingly engage in a conspiracy in restraint of the said business, trade and commerce, so then being carried on by them in the manner aforesaid, whereby the said business, trade and commerce was restrained in the several ways and by the several means now here set forth and described, that is to say:

Competition as to the prices at which the said merchandise was sold and delivered by the said corporation defendants and the said firms in the said States of the conspiracy, which before the period of time in this indictment first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was prevented and destroyed by the said defendant from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them styled "current, reasonable market prices," for the said merchandise so sold and delivered by the said corporation defendants and the said firms in those States, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so fixed and caused to be fixed; which said uniform and non-competitive prices were prices greatly in excess of the prices which but for the said unlawful conspiracy would at such times have prevailed for the said merchandise in the said business, trade and commerce, and were prices therefore unreasonable, and were a tax on the people of the said States of the said conspiracy amounting to a large sum of money, to wit, four million dollars, annually during the continuance of the same.

For and on account of such quantity of the said merchandise as was sold and delivered as aforesaid by any of such corporation de-

fendants or of such firms, in excess of amounts allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and de-
93 livered in excess, was, by the corporation defendants and firms so selling and delivering the same, paid into a common fund, held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, compensated, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as sold and delivered less than the amounts so allotted to them respectively, so it was not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy that each of the said corporation defendants and of the said firms also paid into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be the absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm, in disposing of its said allotment in carrying on the said business, trade and commerce, on its part faithfully should exercise every reasonable effort and due business diligence to maintain the prices so fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its said excess sales, in which case an equal amount was returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also made uniform and non-competitive as between all of the said corporation defendants and the said firms, in the said business, trade and commerce, among the said States of the conspiracy.

As a convenient intermediary and common agent between the said corporation defendants and the said firms, respectively and as a means of securing their co-operation in carrying out the said unlawful conspiracy, the said defendants made use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company, Limited, was also allowed and re-
94 quired to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of September, in the year nineteen hundred and three, during the period of time aforesaid, at and within the City of New York, in the State of New York, unlawfully did knowingly, deposit with the Continental Trust Company, of the said City of New York, the sum of twenty-six thousand dollars, in connection with the purchase of by the said trust company on behalf of the said Virginia-Carolina Chemical Company, and in the name of one Montrose Stuart, a clerk in the office of the said trust company, of twenty-six hundred shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Samuel T. Morgan, on the seventh day of October, in the same year nineteen hundred and three, and during the period of time aforesaid, at and within the said city of New York, in the State of New York, unlawfully did deliver to the said William DeC. Kessler, Vice-President of the said Colonial Development Company, Limited, three checks drawn by the said Virginia-Carolina Chemical Company, one upon the National City Bank, of New York City aforesaid, for eighty thousand dollars, another on the Bank of America, of New York City aforesaid, for fifty thousand dollars, and the other on the National Park Bank, of New York City aforesaid, for thirty-five thousand and four hundred and sixty-eight dollars, aggregating one hundred and sixty-five thousand and four hundred and sixty-eight dollars, as and for a payment, by the said Virginia-Carolina Chemical Company, to the said Colonial Development Company, Limited, of twenty cents a ton on its allotment under the said unlawful conspiracy; he the said Samuel T. Morgan, when and where he so as aforesaid delivered the said checks to the said William DeC. Kessler, well knowing the character and purpose of the same, and well knowing that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as acts on their parts respectively of engaging in the same, the said Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox,
95 J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, on the seventeenth day of September, in the year nineteen hundred and three, and during the period aforesaid, at the said City of New York, in the said State of New York, unlawfully did meet together to discuss and further the object of the said unlawful conspiracy; they the said Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy,

Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, when and where they so as aforesaid met together, each well knowing the character and purpose of the said meeting, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank E. Wilcox, on the first day of November, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did deliver to one W. W. Perkins, Secretary of the said American Fertilizing Company, a certain document, too voluminous to be here set forth, stating certain prices and terms of sale, fixed in pursuance of the said unlawful conspiracy, for the said fertilizer merchandise, in the States of North Carolina, South Carolina, Georgia, Florida, Alabama and Tennessee, for the spring season of the year nineteen hundred and four; he the said Frank E. Wilcox at the time and place when and where he so as aforesaid delivered the said document to the said W. W. Perkins, well knowing the character of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, and during the period of time aforesaid, at the town of Decherd, in the said Middle District of Tennessee, by and through one
96 F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, and during the period aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to

furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, and during the period of time aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at the City of Nashville, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, a certain notice of shipment, partly written and partly printed, in the words and figures following, that is to say:

"The Armour Fertilizer Works
Owned and operated by
Armour & Company.

Prudential Building,
Atlanta, Ga.

Duplicate.
To be Mailed with Bill of
Lading to Customer.

No. 612
March 10", 1905.

97 We have this day shipped from Nashville, Tenn. storage
To Bramlitt Hdw Co.
Corinth, Miss.
Charge to S. D. Bramlitt. Address same.

No. Bags.	Weight of bags.	Brand	Tons.
400	100	King Cotton 8.2.2	20

Order No. 4613.
Bill of lading herewith. Invoice will be mailed from Chicago.
Above quantities shipped 3 10 1905. Freight Terms.....
Car No. 13619. Via L. & N.
Charges prepaid $48.00.
THE ARMOUR FERTILIZER WORKS,
Per ALEX. LESLIE."

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the

said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Austin B. Carpenter, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Assistant Secretary of the said Colonial Development Company, unlawfully did sign his name, to wit, "A. B. Carpenter, Ass't Sec'y" on the face of a certain stock certificate, to wit, certificate No. 28, showing the ownership by one Thomas M. Green of fifty-one shares of the capital stock of the said Colonial Development Company; he the said Austin B. Carpenter, at the time and
98 place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his said act to be done in pursuance and to effect the object of the said conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles H. MacDowell, on the twelfth day of January, in the year nineteen hundred and five, and during the period of time aforesaid, at and within the city of Chicago, in the State of Illinois, unlawfully did sign his name, to-wit, "C. H. MacDowell," under the name of the Armour Fertilizer Works, and after the word "by" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Armour and Company, under the trade name of "Armour Fertilizer Works," offered to furnish and deliver at Corinth, in the State of Mississippi to one S. D. Bramlitt, twenty tons of the fertilizer merchandise aforesaid; he the said Charles H. MacDowell, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Acme Manufacturing Company, on the first day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the city of Wil-

mington, in the State of North Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of six hundred and twenty dollars for sixty-two shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Alabama Chemical Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Montgomery, in the State of Alabama, unlawfully did knowingly deliver its certain check drawn upon the Merchants and Planters-Farley National Bank, Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of William DeC. Kessler, as payment for forty-two shares of the capital stock of the said Colonial Development Company, Limited;

99 And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Anderson Phosphate and Oil Company, on the twenty-ninth day of August, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Anderson, in the State of South Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of five hundred and eighty dollars for fifty-eight shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly buy from the Carolina Savings Bank, Charleston, South Carolina, a draft upon the Citizens National Bank, of New York City, for the payment of the sum of seven thousand nine hundred and forty-nine dollars and forty-three cents to the order of one Frank E. Taylor, Vice-President and General Manager of the said Ashepoo Fertilizer Company;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and *and* during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly cause the said Frank E. Taylor to endorse the check last above mentioned payable to the order of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Blackshear Manufacturing Company, on the seventeenth day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Blackshear, in the State of Georgia, unlawfully did know-

ingly deliver to the Atlantic Coast Line Railroad Company six tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of E. J. Blume & Company, at Live Oak, in the State of Florida;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Etiwan Fertilizer Company, on the fourteenth day of December, in the year nineteen hundred
100 and three, and during the period of time aforesaid, at and within the town of Cairo, in the State of Georgia, by and through one P. H. Seabrook, its agent, unlawfully did knowingly offer and agree to furnish and deliver to the firm of Wight Brothers, of Cairo aforesaid, thirty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank Burbidge, on the first day of July, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Charleston, in the State of South Carolina, having then and there in his hands a certain check, dated the thirtieth day of June, in the same year nineteen hundred and four, drawn by the said Alabama Chemical Company upon the Continental National Bank of Chicago, for the payment of eleven hundred and forty-two dollars and ninety-seven cents to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Pay to order of People's National Bank, Colonial Development Co., Ltd., F. Burbidge, Pres."; he the said Frank Burbidge then and there, to wit, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William J. McCormack, on the ninth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, having then and there in his hands a certain check dated the fifth day of September, in the same year, drawn by the said New Orleans Acid & Fertilizer Company, upon the Louisiana National Bank of New Orleans, for the payment of seven hundred and fifty dollars to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Colonial Developm't Co., Frank Burbidge, Sec. & Treas., per Wm. J. McCormack"; he the said William J. McCormack, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy,

and to effect the object of the same, and as an act on its part of engaging in the same, the said Federal Chemical Company, of
101 Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the said State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, and during the period of time aforesaid, at Springfield afore-
102 said, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff & Williams, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Goulding Fertilizer Company, Limited, on the twenty-fifth day of November, in the year nineteen

hundred and three, and during the period of time aforesaid, at and within the town of Cullman, in the State of Alabama, by and through one W. E. Craig, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one John Sutterer, at Cullman aforesaid, three hundred and seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the sixth day of September, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Pensacola, in the State of Florida, having then and there in his hands a certain check, dated the fifth day of September, in the same year nineteen hundred and three, drawn by the said Alabama Chemical Company upon Merchandise Merchants and Planters-Farley National Bank of Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of W. DeC. Kessler, unlawfully did sign his name, to wit, "W. DeC. Kessler," upon the back of the said check next below the written words "Pay to the order of Colonial Development Co."; he the said William DeC. Kessler then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the back of the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the said fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Vice-President of the said Colonial Development Company, unlawfully did sign his name, to wit, "W. DeC. Kessler, V. P." on the face of the said stock certificate in the name of Thomas M. Green; he the said William DeC. Kessler, at the time and place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his act to be done in pursuance and to effect the object
103 of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Gulfport Cotton Oil Fertilizer and Manufacturing Company, on the twenty-seventh day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-four hundred dollars for and in respect of twelve thousand tons of the fertilizer merchandise aforesaid, allotted to the said Gulfport Cotton Oil, Fertilizer and Manufacturing Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy,

and to effect the object of the same, and as an act on its part of engaging in the same, the said Home Mixture Guano Company, on a day in the year nineteen hundred and three to the said grand jurors unknown, and during the period of time aforesaid, at and within the City of Columbus, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Jackson Fertilizer Company, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Jackson, in the State of Mississippi, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Marietta Fertilizer Company, on the twenty-first day of July, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by and through one L. W. Reeves, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one James A. Boyd, at Jonesboro aforesaid, seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said James G. Tinsley, on the third
104 day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Nashville, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley; he the said James G. Tinsley, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Meridian Fertilizer Factory, on the seventh day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Cullman, in the State of Alabama, by its agent E. L. Robbins, un-

lawfully did knowingly offer to furnish to C. A. Steifelmeyer one hundred and fifty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge; he the said
105 William D. Rhea, then and there, to wit, at the time and place when and where he so directed and required the said E. W. Connell to sign his name as aforesaid to the said check, well knowing the nature and contents of the said check, and that his said direction and requirement were in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid; he the said William D. Rhea then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the said document, well knowing the character of the same, and well knowing his said act to be one done in pursuance of and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said New Orleans Acid & Fertilizer Company, on

the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars for seventy-five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Old Dominion Guano Company, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-six hundred and twenty dollars, for and in respect of
106 thirteen thousand one hundred tons of the fertilizer merchandise aforesaid, allotted to the said Old Dominion Guano Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William L. Peel, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did sign his name, to wit, "W. L. Peel, Prest.," to a certain check, to wit, a check drawn by the Maddox-Rucker Banking Company upon the National Park Bank, New York, for the payment of twenty-six hundred and twenty dollars to the order of the said Colonial Development Company, Limited; he the said William L. Peel, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Planters Chemical Company, on the thirtieth day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Talladega, in the State of Alabama, unlawfully did knowingly pay the said Colonial Development Company, Limited, the sum of fifty dollars for five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Read Phosphate Company, on the fifth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Hartselle, in the State of Alabama, unlawfully did knowingly offer to sell and deliver to one S. E. Stewart, at that place, forty to fifty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of en-

gaging in the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here
107 set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid; he the said Abram C. Read, then and there, to wit, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved, Nashville, Tenn. Dec. 6, 1904," and above the word "Manager," upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof, offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid; he the said Abram C. Read then and there, to wit, at the time and place when and where he so as aforesaid signed his name to the last mentioned document, well knowing the character and contents of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said F. S. Royster Guano Company, on the thirtieth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine thousand three hundred and fourteen dollars and seventy-four cents, on account of such merchandise sold and delivered by the said F. S. Royster Guano Company in excess of its allotment under the aforesaid unlawful conspiracy;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles F. Burroughs, on the
108 twenty-fifth day of March, in the year nineteen hundred and four, and during the period of time aforesaid, at and within

the City of Norfolk, in the State of Virginia, unlawfully did sign his name, to wit, "C. F. Burroughs," under the word "countersigned" and above the words "Vice-President" upon the face of a certain document, partly written and partly printed, too voluminous to be here set forth in full, wherein and whereby the said F. S. Royster Guano Company and he the said Charles F. Burroughs, as Vice-President thereof, offered to sell to one J. W. Carter, and to deliver to him at Maxton, in the State of North Carolina, ten tons of the fertilizer merchandise aforesaid; he the said Charles F. Burroughs, at the time and place when and where he so as aforesaid signed his name to the said document, well knowing the character and contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Savannah Guano Company, on the second day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did knowingly pay to the said Frank Burbidge the sum of nine hundred and forty dollars for ninety-four shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said A. J. Ives, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did sign his name, to wit, "A. J. Ives, Secty. & Treas." to a certain check, to wit, a check drawn by the Savannah Guano Company upon the Merchants National Bank, Savannah, Georgia, for the payment of three thousand one hundred and forty dollars to the order of New York Exchange; he the said A. J. Ives, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further n pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Southern States Phosphate and Fertilizer Company, on the fifth day of September, in the year nineteen
109 hundred and three, and during the period of the time aforesaid, at and within the City of Augusta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine hundred and sixty dollars for ninety-six shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Chemical and Oil Company, on the third day of October, in the year nineteen hundred and three,

and during the period of time aforesaid, at and within the Town of Troy, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand dollars for and in respect of one-half of forty thousand tons of the fertilizer merchandise aforesaid allotted to the said Standard Chemical and Oil Company, as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Guano and Chemical Manufacturing Company, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand seven hundred and seventy-four dollars and seventy-seven cents as a partial payment for and in respect of the fertilizer merchandise aforesaid, allotted to the said Standard Guano and Chemical Manufacturing Company, as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Swift & Company, on the first day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by its agent, J. Z. Elliott, unlawfully did knowingly offer to furnish to one W. P. Diehl thirty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

And that, further in pursuance of the said unlawful con-
110 spiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes & Bro., at Oxford, Alabama, a certain letter of the tenor following, to wit:

T. G. Tinsley, Pres't & Treas. Allen Hardison, Sec'y.

Tennessee Chemical Company, Manufacturers and Importers of Ox Fertilizers.

NASHVILLE, TENNESSEE, *May* 17, '05.

Messrs. D. P. Haynes & Bro., Oxford, Ala.

DEAR SIRS:—I am in receipt of your favor of the 16th and beg to state we could not allow any discount further than the 5% for cash settlement. We will be glad to have you settle in cash on this basis if you desire to do so, but are sorry to state we are not in a position to offer you any further discount.

Yours truly, T. G. TINSLEY, *President;*

he the said T. Garland Tinsley then and there, to wit, at the time and place when and where he so as aforesaid caused the said letter to be written and sent as aforesaid, well knowing that the same was so written and sent in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part in engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Company, James G. Tinsley. By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon the Mercantile National Bank, New York, for the payment of
111 sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley; he the said T. Garland Tinsley, at the same time and place when and where he so as aforesaid wrote the said endorsement on the back of the said check, well knowing the contents of the same, and that his said act was done in pursuance of and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Valley Fertilizer Company, on the second day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Florence, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars, as a partial payment for and in respect of fertilizer merchandise aforesaid, allotted to the said Tennessee Valley Fertilizer Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on their parts respectively, of engaging in the same, the said Frank Burbidge,

Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson, during the period of time aforesaid, at the City of New York, in the State of New York, the City of Washington, in the District of Columbia, Old Point Comfort and Hot Springs, in the State of Virginia, St. Augustine, in the State of Florida, and French Lick Springs, in the State of Indiana, unlawfully did as officers, directors and attorney of the said Colonial Development Company, Limited, meet together for the purpose of discussing and attending to the affairs of the said Colonial Development Company, Limited; they the said Frank Burbidge, Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson when and where they so met together aforesaid, well knowing the purpose of such meetings, and well knowing their acts in the premises to be acts in pursuance and to effect the object of the said unlawful conspiracy, and that the same were done as acts on their parts respectively of engaging in the said unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, during the period of time aforesaid, and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form aforesaid, unlawfully did engage in a conspiracy in restraint of trade and commerce among the several States; Against the
112 peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

SECOND COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the first count described, and were so engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord, nineteen hundred and three at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the grand jurors unknown, and engage in a conspiracy, among themselves and with such other

unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid; which said unlawful conspiracy in this count mentioned then and there was a conspiracy for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described; that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing and causing to be fixed, uniform and non-competitive prices, by them to be styled "current, reason-
113 able market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such times prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum ther-of during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be the

absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on the said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its excess sales, in which case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of pay-
114 ment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their cooperation in carrying out the said unlawful conspiracy, the said defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, and as being acts on the part of the said corporation and individual defendants respectively of engaging in that conspiracy, are now here in this count charged to be acts by the same corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned, and to have been acts on the part of the said corporation and individual defendants respectively of engaging in the last-named unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the

said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of trade and commerce among the several States;
115 against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

THIRD COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the said first count described, and so were engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the said United States, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the said United States, to wit, the offense of engaging in a combination, among themselves and with such other unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid, which said unlawful conspiracy in this count mentioned then and there was a conspiracy to engage in a combination for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and com-
116 merce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them to be styled "current,

reasonable market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such time prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful combination and ninety per centum thereof during the second year; it being a further element of the said unlawful combination in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be — absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on the said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its excess sales, in which
117 case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their cooperation in carrying out the said unlawful combination, the said

defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful combination; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, are now here in this count charged to be acts by the said corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a con-
118 spiracy to commit an offense against the said United States; Against the peace and dignity of the said *said* United States; *Against the peace and dignity of the said United States*, and contrary to the form of the statute in such case made and provided.

Fourth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in

connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State, but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchan-
119 dise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the aforesaid business and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section one of the said Act of Congress, approved July 2, 1890, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Ala-

bama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company,
120 and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Daney, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly engage in a conspiracy in restraint of commerce among the several States, to wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, whereby the said commerce was restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise which were maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the period of such unlawful conspiracy, and greatly in excess of those prices which would have otherwise prevailed in the said States during the period of such unlawful conspiracy, and were therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby earnest money was given to secure the maintenance of such prices and compensation was made to those losing volume of business by reason of maintaining such prices, that is to say:

There was from time to time allotted to each of said corporation

defendants and firms an amount of tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporations defendants and firms paid into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sums becoming due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which faithfully maintained such uniform and non-competitive prices and failed to make sales
121 and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but sold and delivered through itself and its subsidiary companies a minimum amount thereof required as a guarantee of good faith, received from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid fell short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies made such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, as a penalty upon such excess sales, paid into such common fund like amounts per ton on the said respective kinds of fertilizers, divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means whereby said unlawful conspiracy was effected, a corporation of Ontario, Canada, whose stock was apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was the common fund aforesaid into which was paid the earnest money and penalties on excess sales aforesaid, and from which was paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which the same was operated and directed.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that within the period aforesaid of said unlawful conspiracy in this count of this indictment mentioned, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and did do and perform such acts as acts on their respective parts of engaging in the said unlawful conspiracy in this count of this indictment mentioned, and that each of such defendants at the time and place when

and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant- respectively, then and there well knew the character of such act and that such
122 act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, and as an act on the part of such defendant in engaging in the same, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year, nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the
123 tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to

Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chatta-
124 nooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit,
125 "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawul conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec. 6, 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abraham C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P.
126 Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said corporation and individual defendants, during the period of time aforesaid, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

FIFTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen

hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the
127 other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so

carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, approved July 2, 1890, the said corporation de-
128 fendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, and engage in a conspiracy among themselves and with such other unknown corporations and persons, in restraint of commerce among the several States, to-wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid by which unlawful conspiracy said commerce was to be restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the

various points of delivery in the said States of the conspiracy,
129 which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy, and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices, that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to make sales and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales as aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose
130 treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary

and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful conspiracy was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that such act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

131 In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Dercherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one

Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesand, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company,
132 on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of

Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District
133 of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his, the said E. W. Connell's name as such Treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fer-

tilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn., Dec. 6 1904" and
134 above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for

the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

135 SIXTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United

States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An
136 Act to protect trade and commerce against unlawful restraints and monopolies"; that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorneys of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and in the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section 5440 of the Revised Statutes of the United States, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack,
137 George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Roys-

ter, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the United States, to wit, to engage in a combination in restraint of commerce among the several States, namely, a combination in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, and did then and there so conspire to commit the aforesaid offense by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy; and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices; that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to
138 make sales and deliveries of such merchandise through itself and its subsidiary — amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation

defendants and firms which, through itself and its subsidiary companies, should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful combination was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that
139 such act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Compa , on the twentieth day of September, in the year nineteen hundred a d three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the

object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at
140 West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and

within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchan-
141 dise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Arndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee,

unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Man-
142 ager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec 6 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee,

unlawfully did cause to be written and sent by mail to "D. P. Haynes and Bro.," at Oxford, Alabama, that certain letter of the date
143 set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley, By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did conspire to commit an offense against the United States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

ABRAM M. TILLMAN,
United States Attorney.

(Endorsed as follows:) No. 963. United States Circuit Court, Middle District of Tennessee. *The United States vs. Virginia-Carolina Chemical Company et als.*

Indictment for violating Act of Congress approved July 2, 1890, and entitled "An Act to Protect Trade and Commerce against unlawful restraints and monopolies," and Section 5440 R. S. U. S.

A True Bill. Robert Q. Stewart, Foreman of the Grand Jury.

Names of Witnesses Sworn and Examined Before the Grand Jury.

J. C. Adams, Henry E. Ahern, Lee Ashcraft, Eugene Atkinson, N. E. Barker, W. F. Barrett, James C. Beck, J. M. Berry, W. W. Bird, L. W. Botts, Clarence Braden, S. D. Bramlitt, A. P. Brantley,
144 B. D. Brantley, Dewitt Brown, H. C. Brown, Arthur Bussey, Hezekiah Bussey, E. J. Blume, James A. Boyd, William F. Burns, Oscar Bright, J. W. Carter, B. G. Clark, C. W. Comes, E. W. Connell, Charles Earle Currie, R. L. Davis, Joseph Denee, W. P. Diehl, A. M. Dobbs, John V. Dobson, C. H. Drayton, W. L. Dumas, J. B. Duncan, S. Eastland, T. B. Edwards, Culpepper Exum, H. C. Fischer, J. B. Fiser, Albert French, C. A. Gambrill, A. H. George, John E. Gibbs, William Gilchrist, James M. Goldsmith, A. A. Green, E. P. Grice, W. A. Hansell, G. A. Harrington H. J. Harby, Allen Hardison, L. C. Hayne, J. L. Haynes, D. P. Haynes, R. W. Henderson, P. W. Hendricks, E. R. Hodgson, junior, E. R.

Hodgson, senior, J. L. Horn, W. E. Hudson, T. J. Hunt, R. H. Johnston, T. V. Kessler, E. M. Kirk, Henry Kirn, H. L. Law, Alexander Leslie, J. A. Lindsey, W. Hampton Logan, Harry Luck, John A. Lewis, W. F. McKenzie, Robert F. Maddox, H. W. Malloy, E. R. Manning, H. L. Milligan, J. Allen Moore, M. B. Neece, W. J. Oliver, E. Thomas Orgain, D. B. Osborne, Every M. Paget, W. W. Perkins, Dr. J. D. Plunkett, F. B. Pope, William Price, Charles Rainey, Frederick Rayfield, Isaac W. Read, W. A. Reynolds, I. T. Rhea, W. E. Richards, H. A. Rogers, V. N. Roadstrum, W. G. Sadler, G. W. Sanders, E. M. Sentelle, W. McR. Smith, R. G. Sparrow, J. F. Stackley, C. A. Steifelmeyer, S. E. Stewart, W. B. Stratford, John Sutterer, E. R. Taber, Frank E. Taylor, W. B. Taylor, W. D. Tharin, J. R. Timmerman, J. W. Todd, S. W. Travers, George H. Tucker, E. Van Winkle, J. T. Welch, O. C. Wiley, C. H. Willcox, T. B. Williams, Benjamin L. Willingham, W. S. Wight, E. G. Woodling.

Filed 11:30 A. M., May 25, 1906. H. M. Doak, Clerk, by E. L. Doak, Deputy Clerk. Abram M. Tillman, U. S. Atty.

I, H. M. Doak, Clerk of the Circuit Court of the United States in and for the Middle District of Tennessee, hereby certify that the foregoing is a true, perfect, and complete copy of an indictment filed as thereupon endorsed, etc. In witness whereof I have hereunto signed my name and affixed the seal of said court, at my office, this the 26th day of May, 1906.

[SEAL OF COURT.] H. M. DOAK, *Clerk.*

145 *Warrant.*

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

To the Marshal of the Eastern District of Virginia, Greeting:

Whereas complaint in writing, on oath, has been made to me charging that Charles H. MacDowell stands indicted by the grand jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said Charles H. MacDowell on the eighth day of July, in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, did in the Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said Charles H. MacDowell did unlawfully conspire with divers other persons and corporations to com-

mit an offense against the United States, to-wit, the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States; and application has been made to me that the said Charles H. MacDowell may be arrested and imprisoned and removed or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee;

146 Now therefore, you are hereby commanded to arrest the said Charles H. MacDowell if he be found within your said District, and bring him forthwith before me at my Chambers in Richmond, in order that he may be dealt with according to law.

Richmond, July 14, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge.

Marshal's Return.

Pursuant to the within writ, I have taken the defendant Charles H. MacDowell into custody and now have him before Hon. Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia.

July 14, 1906.

MORGAN TREAT,
United States Marshal.

Conclusions of the Court.

Filed July 14th, 1906.

THE UNITED STATES
vs.
CHARLES H. MACDOWELL.

The conclusion reached by the Court is that in a proceeding for the arrest and removal of persons charged with a violation of the laws of the United States pursuant to section 1014 of the Revised Statutes of the United States, before a United States District

147 Judge sitting in the State of Virginia, in which State there no longer exists the right of a preliminary examination upon a criminal charge prior to the trial upon the merits, when such Judge is called upon to act as well in the matter of the apprehension of such persons, as in their removal to the jurisdiction in which they have been indicted, that upon the government's presentation of a sufficient indictment regularly found by a grand jury in a court of the United States, properly charging the commission of an offense within the district in which such indictment is found, coupled with proof of the identity of the person indicted, it is its duty to properly bail such person for appearance before the court in which he is indicted, or cause him to be removed thereto.

Order Allowing Bail.

Filed July 14th, 1906.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The within named Charles H. MacDowell having been brought before me, and identified; and it appearing by a duly authenticated copy of an indictment that he stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al.,*" for violation of section one of the act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United
148 States, it is ordered that the said Charles H. MacDowell give bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial before said Court under the said indictment, or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee, to be there dealt with according to law.

Richmond, Va., July 14", 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the
Eastern District of Virginia.

Warrant of Imprisonment and Removal.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The President of the United States to the United States Marshal of the Eastern District of Virginia, Greeting:

Whereas it has been made to appear that Charles H. MacDowell stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled: "The United States *vs.* Virginia-Carolina Chemical Company *et al.,*" for violation of section one of the act of Congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States; and whereas the said Charles H. MacDowell having been brought before me, and identified; and a certified copy of said indictment furnishing probable cause to believe him to be
149 guilty as therein charged, and whereas it was thereupon ordered by me that said defendant give bail in the sum of five thousand dollars with one or more sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial under said indictment, or that in default

thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee to be there dealt with according to law; and the said defendant having failed and refused to give bail as required, therefore:

You are hereby commanded in the name and by the authority of the said United States to imprison the said Charles H. MacDowell in accordance with law, and that with all convenient speed you remove him hence to the said Middle District of Tennessee and there surrender him to the Marshal of that District, there to be dealt with according to law.

Richmond, Va., July 14, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the
Eastern District of Virginia.

Marshal's Return on Foregoing Warrant

Executed July 14, 1906, by taking the within named defendant Charles H. MacDowell into custody, but before the order of removal was executed, a writ of *Habeas Corpus* was issued by order of the Circuit Court of the United States for the Eastern District of Virginia, sitting at Richmond, Virginia, commanding me to produce the body of the said Charles H. MacDowell before the said United States Circuit Court in the City of Richmond, Virginia, forthwith,
150 and in pursuance of said writ of *Habeas Corpus,* I took the said Charles H. MacDowell before the United States Circuit Court as aforesaid, by which court said writ of *Habeas Corpus* was discharged and an appeal allowed to the said Charles H. MacDowell to the Supreme Court of the United States, pending which appeal the said Charles H. MacDowell was by order of said Circuit Court discharged from custody on bond conditioned for his appearance before said Circuit Court to abide such order as should be made by said Circuit Court upon return of the mandate of said Supreme Court of the United States upon determination of said appeal.

Richmond, Virginia, July 14, 1906.

MORGAN TREAT,
United States Marshal.

Statement of Proceedings and Order.

Filed July 14, 1906.

THE UNITED STATES OF AMERICA, *Eastern District of Virginia:*

THE UNITED STATES
vs.
CHARLES H. MACDOWELL.

This is an application under the provisions of Section 1014 of the United States Revised Statutes for a warrant for the removal of

Charles H. MacDowell to the Middle District of Tennessee and comes before me as follows:

The District Attorney for this District, together with Mr.
151 E. T. Sanford, Counsel of the United States, presented to me a verified complaint of Morgan Treat, United States Marshal for this District, with the certified copy of an indictment filed on May 25th, 1906, in the Circuit Court — the United States for the Middle District of Tennessee in the case of the United States *vs.* Virginia-Carolina Chemical Company and others defendants, including among such defendants the said Charles H. MacDowell.

Said complaint and copy of said indictment are made parts of this order. Upon the exhibition of this Indictment and affidavit and the *ex parte* motion of the counsel for the United States I made an order for the arrest of said Charles H. McDowell and his production before me.

This order was duly executed by the said Marshal, who arrested the said Charles H. McDowell and brought him before me in Richmond on this 14th day of July, 1906, as shown by his return. When the accused was so brought before me it was moved by the counsel for the United States that inasmuch as the indictment charged offenses against the United States triable in the Circuit Court of said United States for the Middle District of Tennessee, and the identity of the defendant was admitted, that an order be forthwith made for the commitment of said Charles H. McDowell for trial before said Circuit Court.

It was further stated and agreed that while the defendant Charles H. McDowell was not a resident of the Eastern District of Virginia, he was present in this District with his counsel, and that so far as the jurisdiction in the Eastern District of Virginia was concerned, he consented to these proceedings being instituted here, and to their being conducted here with the same force and effect, and in like manner as if he were a resident of the Eastern District of Virginia; and furthermore waived the previous issuance of any bench warrant for his arrest, from the Circuit Court of the Middle District of Tennessee, if the same were necessary.

This motion was made upon the certified copy of the Indictment without any further testimony, the identity of the party arrested
and brought before me with the Charles H. McDowell men-
152 tioned in the Indictment being admitted.

And thereupon the defendant, Charles H. McDowell offered himself as witness in his own behalf, and being about to be sworn, the United States, by its counsel, thereupon objected to the witness being sworn or to any testimony being given in rebuttal of the Indictment in these proceedings, on the ground that the identity of the defendant being admitted, inasmuch as the Indictment on its face charges offenses against the United States committed and triable in the jurisdiction in which the defendant stands indicted, no evidence is admissible here to impeach the indictment, and the order of commitment, should be made without other proof.

The Defendant's counsel thereupon offered to prove by the defendant and other witnesses then and there present, that the

Circuit Court for the Middle District of Tennessee had no jurisdiction over the person of said defendant touching the offense charged in said indictment, in that defendant and said other witnesses, would, if permitted, testify that said alleged conspiracies which are in the said indictment mentioned were not, nor was any or either of them, engaged in, at or within said Middle District of Tennessee.

That said Charles H. McDowell did not, at or within said Middle District of Tennesee engage in, or do or take part in any act matter or thing in or about or with respect to the engaging in, promoting or furthering the said alleged conspiracies or any or either of them, or to effect the object thereof.

That said Charles H. McDowell did not, at any time or at any place, join in, assent to, or know of said alleged conspiracies or any or either of them, engaged in or entered upon in said Middle District of Tennessee, or any conspiracy which had been or was engaged in at or within said Middle District of Tennessee, or do any act, matter or thing in or about the formation, engaging in, furthering or promoting or to effect the object of any such conspiracy as is
153 hereinabove referred to.

That if said alleged conspiracies which are in said indictment mentioned or refereed to, or any or either of them, ever were or was engaged in at or within the Middle District of Tennessee by said other defendants or any or either of them or by any corporations or persons, the said Charles H. McDowell did not, at any time or at any place engage in or join, or assent to, or know of the same or do any act in or about the engaging in or promotion thereof or to effect or towards effecting the object of the same.

Nor has defendant done, or performed, or been engaged in, or a party to the same, or any of them in any other place or places at any other time or times whatsoever.

Thereupon counsel for the Government renewed its objections as aforesaid.

After hearing counsel on both sides, the Court announced its conclusions as follows:—

"The conclusion reached by the Court is that in a proceeding for the arrest and the removal of persons charged with a violation of the laws of the United States pursuant to section 1014 of the Revised Statutes of the United States, before a United States District Judge, sitting in the State of Virginia, in which State there no longer exists the right of a preliminary examination upon a crime charged prior to the trial upon the merits, when said Judge is called upon to act as well in the matter of the apprehension of such persons, as in their removal to the jurisdiction in which they have been indicted, that upon the Government's presentation of a sufficient indictment regularly found by a grand jury in a court of the United States, properly charging the commission of an offense within the district in which such indictment is found, coupled with proof of the identity of the person indicted, it is its duty to prop-
154 erly bail such person for appearance before the court in which he is indicted, or cause him to be removed thereto."

Therefore, it was ordered that the testimony offered is inadmissible, and will not be received, and I therefore made the following order:

UNITED STATES OF AMERICA, *Eastern District of Virginia, set:*

The within named Charles H. McDowell having been brought before me, and identified; and it appearing by a duly authenticated copy of the indictment that he stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al.,*" for violation of section one of the act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies and for violation of section 5440 of the Revised Statutes of the United States, it is ordered that the said Charles H. McDowell give bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial before said court under the said indictment; or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee, to be there dealt with according to law.

Richmond, Va., July 14th, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

155 And after said order had been made and the defendant declined to give bond, the Counsel for the United States moved that the warrant do issue directed to the Marshal of this District for the imprisonment and removal of the said Charles H. McDowell to the Middle District of Tennessee and his delivery to the custody of the United States Marshal of that district.

On such motion counsel for the said Charles H. MacDowell objected and again offered the said Charles H. MacDowell as a witness, together with the other witnesses here-before referred to, to establish the same matters and facts as hereinbefore stated with regard to the objection to the order for the commitment of the said Charles H. MacDowell which testimony was again offered and was again objected to by the counsel for the United States on the same grounds as above set forth, and on the further ground that these matters could not now be inquired of in this stage of the proceedings, and was again excluded by the court, to all of which counsel for the said Charles H. MacDowell duly excepted and had the exceptions noted and entered.

I therefore issued a warrant directed to the Marshal as follows:

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

Richmond, Va., July 14, 1906.

Warrant of Imprisonment and Removal.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The President of the United States to the United States
156 Marshal of the Eastern District of Virginia, Greeting:

Whereas it has been made to appear that Charles H. McDowell stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled: "The United States *vs.* Virginia-Carolina Chemical Company *et al,*" for violation of section one of the act of congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States; and whereas the said Charles H. MacDowell having been brought before me, and identified; and a certified copy of said indictment furnishing probable cause to believe him to be guilty as therein charged, and whereas it was thereupon ordered by me that said defendant give bail in the sum of five thousand dollars with one or more sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial under said indictment, or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee to be there dealt with according to law; and the said defendant having failed and refused to give bail as required therefore:

You are hereby commanded in the name and by the authority of the said United States to imprison the said Charles H. MacDowell in accordance with law, and that with all convenient speed you remove him hence to the said Middle District of Tennessee and there surrender him to the Marshal of that District there to be dealt with according to law.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

Richmond, Va., July 14, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge.

Richmond, Va., July 14, 1906.

157 *Certificate of Clerk.*

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

I, G. E. Bowden, Clerk of the District Court of the United States for the Eastern District of Virginia, do hereby certify that the foregoing is a full and true transcript of the record and proceedings in the therein entitled cause made in obedience to the direction in the return of the Honorable Edmund Waddill, Jr., Judge of said Court, to the writ of certiorari, attached to and made a part of said record.

In witness whereof, I have hereunto set my hand and affixed the seal of the said District Court, at the City of Richmond, this 14th day of July, A. D., 1906.

[Seal United States District Court.]

G. E. BOWDEN,
Clerk United States District Court,
By JOSEPH P. BRADY,
Deputy Clerk U. S. District Court.

Certificate of United States District Judge.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

I, Edmund Waddill, Jr., Judge of the District Court of the United States for the Eastern District of Virginia do hereby certify
158 that the foregoing is a full and true transcript of the record and proceedings had before me in the therein entitled cause.

In witness whereof, I hereunto set my hand and seal of said Court at Richmond, this 18th day of July, A. D., 1906.

[Seal United States District Court.]

EDMUND WADDILL, JR.,
United States District Judge.

159 *Conclusions of the Court.*

Filed July 14th, 1906.

In the United States Circuit Court for the Eastern District of Virginia.

In the Matter of the Petition of CHARLES H. MCDOWELL for Writs of *Habeas Corpus* and Certiorari.

CHARLES H. MCDOWELL, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

Petitioner alleges that he is unlawfully deprived of his liberty. He prays that by virtue of the writ of *Habeas Corpus*, he may be discharged from custody. I find from the petition, from its exhibits, and from respondent's reply that petitioner has been committed to the Marshal of the Eastern District of Virginia by an order of the United States District Judge of that District, with directions to remove petitioner to the Middle District of Tennessee, in order that he may be there tried on an indictment in which he with others, is charged with a violation of the laws of the United States. The pro-

ceedings so resulting were conducted under the provisions of section 1014 of the Revised Statutes of the United States. The Judge so hearing the matter, and so issuing said order of removal, acted in conformity with like proceedings, as provided for in criminal actions in the state of Virginia, in which state petitioner resides, and where the application for his removal was made.

On the hearing of this petition, I am asked to permit peti-
160 tioner to offer testimony, the object of which is to show that probable cause does not exist as to petitioner's guilt of the offense of which he is charged; that he was not within the limits of the jurisdiction of the Middle District of Tennessee when said offense is alleged to have been committed; and testimony tending to show that he is innocent of the charge alleged in the indictment returned against him. Petitioner insists that he should not be removed to said Middle District of Tennessee for trial, but should be discharged from arrest. Should I, on this hearing, permit such testimony? I find from the record before me, that the indictment charges conspiracy; that it is alleged therein that petitioner with others, did in the Middle District of Tennessee, conspire to commit an offense against the laws of the United States. The indictment, in my judgment, sufficiently sets forth such offense. I find that it is in due form, and that it charges a crime; that it alleges a conspiracy such as is prohibited by the laws of the United States; and that an overt act, as described in the statute is charged as having taken place in the Middle District of Tennessee. Such being the charge, I am of the opinion, under the law applicable thereto, that the personal presence of petitioner in said jurisdiction was not essential; and that he can be lawfully proceeded against in that district; and if the allegations set out in the indictment are sustained by competent evidence, that a conviction there can be upheld.

If such be the case, does it not follow that the testimony offered by the petitioner is immaterial? The indictment charges the commission of a crime; alleges that the petitioner with others committed it; and the laws authorizes his conviction in the district to which
he has been ordered removed, if an overt act in pursuance of
161 said conspiracy was committed there. Technical objections to said indictment should not be considered by me on this hearing; they should only be heard by the court in which the indictment was returned.

While it is true that the order to remove for trial should only be issued in cases where probable cause has been shown, it is equally true that a certified copy of the indictment, with proof of the identity of the party accused, has been in a number of well considered cases, held to establish probable cause, and to authorize the warrant of removal. It must be conceded that the authorities are conflicting; but to my mind the path we should follow has been plainly indicated by the opinions of that great tribunal, whose mandates we all obey, whose judgments are the supreme law of the land. In Beavers *v.* Hanckel, 194 U. S., 73, the case rested on the efficacy of the indictment; for no other evidence of guilt was offered. The indictment was held to be *prima facie* evidence of the existence of probable cause.

It satisfied the requirements of the constitution, and the laws made thereunder. Why should not the indictment in the case we now have under consideration serve the same purpose? The testimony tendered is, as I understand this case, immaterial, and the identity of the accused is admitted. His guilt or innocence is not to be ascertained by testimony offered in this jurisdiction, in connection with questions involved in the proceedings relating to the warrant of removal, or this writ of *habeas corpus*. That matter must go to the jury impaneled by the court in which the indictment was returned. To hold otherwise would result in inextricable confusion, and to discharge the petitioner on the showing now made, would tend to impede the due administration of justice; and can
162 only be done, in my opinion, by a strained construction of the statutes.

The writ will be dismissed, and petitioner will be remanded to the custody of the Marshal.

NATHAN GOFF,
U. S. Circuit Judge.

July 14th, 1906.

Order Dismissing Petition and Discharging Writ of Habeas Corpus and Allowing Appeal.

Filed July 14th, 1906.

In the Circuit Court of the United States for the Eastern District of Virginia.

In the Matter of the Petition of CHARLES H. MCDOWELL for Writs of *Habeas Corpus* and Certiorari.

CHARLES H. MCDOWELL, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

This cause was on this, the 14th day of July, 1906, heard before the Honorable, the Circuit Court of the United States for the Eastern District of Virginia, the Honorable Nathan Goff, Circuit Court Judge, presiding, upon the petition of said Charles H. McDowell in this cause and the return of the Marshal, the defendant,
163 thereto, and the return of the District Judge of the Eastern District of Virginia (by agreement the copy of the findings and order of said District Judge being here now taken as his return to said writ of certiorari, and the motion of the petitioner, by his counsel, hereinafter mentioned.

The petition and the return of the Marshal thereto were read, and thereupon the petitioner presented himself as a witness and his coun-

sel moved the Court that he be sworn in order to testify as such, and as such witness to prove the facts averred and set forth in said petition, which facts were then and there repeated and restated to the Court; and his counsel then also stated that the said witness, and other persons then present as witnesses, would testify and prove that the said facts set forth and averred in the petition and exhibits, and repeated by him to the Court, were true.

Thereupon the Honorable Edward T. Sanford, Special Counsel representing the United States, and also the defendant Marshal, objected to the swearing of the said petitioner as a witness and also to the admission of said evidence, upon the ground that said evidence was immaterial and irrelevant, and that it was not allowable to contradict or transverse by evidence in this Court the averments of the indictment which had been found against the petitioner in the Circuit Court of the United States for the Middle District of Tennessee, and that there was no error in the action of the District Judge. The objection so made was sustained, and the witness not allowed to be sworn now allowed to testify to the facts above stated, to which action of the Court the petitioner then and there excepted.

Thereupon it was ordered and adjudged by the said Court
164 that the petition be dismissed and the writ of *habeas corpus* heretofore issued in this cause upon the said petition be and the same is hereby dismissed and discharged; and that the said Charles H. McDowell be remanded to the custody of said Morgan Treat, U. S. Marshal, for the Eastern District of Virginia, to be dealt with by him according to the directions of the writ of the process under which he had custody of the said Charles H. McDowell.

Thereupon, the petitioner presented his petition, setting forth that he was aggrieved by the said order dismissing the said writ of *habeas corpus,* and praying that he be allowed to prosecute an appeal from said final order or judgment, to the Supreme Court of the United States under and according to the law of the United States in that behalf made together with his assignment of error in that behalf which appeal is allowed; and the petitioner having been allowed and the said appeal being hereby granted, the petitioner, by his counsel, thereupon moved the Court that he be enlarged or admitted to bail pending the decision of his said case upon said appeal; and thereupon it was accordingly ordered that the said petitioner and appellant be, and he is hereby enlarged upon his bond and admitted to bail, pending the said appeal to the Supreme Court of the United States; said bond to be in the penal sum of $5,000.00, to be taken and approved by the Clerk of this Court and conditioned for the said petitioner and appellant to appear before this Court to abide such order as shall be made by this Court upon the mandate of the Supreme Court of the United States upon the determination of petitioner's said appeal; and upon the execution by the said Charles H. McDowell of such bond, with surety or sureties, to be approved by the Clerk of this Court, he will be enlarged

and admitted to bail. The Clerk will take as surety any satis-
165 factory guaranty company.

The opinion of the Court in dismissing the petition and discharging the writ of *habeas corpus* is made part of the record herein and will be copied by the Clerk in the transcript on appeal.

NATHAN GOFF,
U. S. Circuit Judge.

July 14, 1906.

Appearance Bond.

Filed July 14th, 1906.

In the Circuit Court of the United States for the Eastern District of Virginia.

In the Matter of the Petition of CHARLES H. McDOWELL for Writs of *Habeas Corpus* and Certiorari.

CHARLES H. McDOWELL, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

We, as principal, and American Surety Company of New York a guaranty and surety company, organized and existing under the laws of the State of New York, with power and authority to become surety for principals in appearance bonds, jointly and sever-
166 ally acknowledge ourselves to owe and to be bound to the United States of America in the penal sum of Five Thousand Dollars ($5,000.00), severally to be made and levied of our goods, chattels, lands and tenements, if default be made herein.

The condition of this obligation is as follows: Whereas the said Charles H. McDowell, being detained in the custody of Morgan Treat, United States Marshal for the Eastern District of Virginia, under commitment and warrant of removal to the Circuit Court of the United States for the Middle District of Tennessee, granted by the Honorable Edmund Waddill, Jr., Judge of the District Court for the Eastern District of Virginia, presented his petition for and sued out a writ of *habeas corpus* from the Circuit Court of the United States for the Eastern District of Virginia, and the said writ of *habeas corpus* duly issued to the said Treat, Marshal, and he made his return thereto; and the said matter of *habeas corpus* came on for hearing before the said Circuit Court of the United States for the Eastern District of Virginia, on the 14th day of July, 1906, when by order thereof the said petition was dismissed and the said writ of *habeas corpus* discharged, and the said Charles H. McDowell remanded to the custody of the said Morgan Treat, Marshal, to be proceeded with as provided by law; and

Whereas, from the said final order dismissing the said petition and writ of *habeas corpus,* the said Charles H. McDowell prayed an appeal to the Supreme Court of the United States, which was granted and said appeal perfected; and

Whereas, the said Circuit Court of the United States allow- said appeal, ordered that pending said appeal the said Charles H. McDowell upon the execution of a bond in the penal sum of
167 Five Thousand Dollars ($5,000.00), conditioned as by said order was provided, might be enlarged and admitted to bail;

Now, therefore, in compliance therewith, and in order to be so enlarged, the said Charles H. McDowell as principal, and the said American Surety Company of New York, as surety, execute this bond upon the condition that, if the said Charles H. McDowell shall duly personally appear in and before the Circuit Court of the United States for the Eastern District of Virginia, then and there to answer the exigency and determination of said appeal, and personally abide the final decision and determination of the said Supreme Court of the United States and of the said Circuit Court of the United States, upon the mandate of the said Supreme Court of the United States, and obey and abide the orders of said Circuit Court of the United States, and not depart without leave upon the conditions aforesaid, and upon the entry of said orders upon said appeal, then and in that event this bond or obligation shall be void; but otherwise it shall be and remain in full force and effect.

In witness whereof, the said Charles H. McDowell as principal, and the said American Surety Company of New York as surety, the said surety being represented by and through Robert Le Masurier, its duly authorized agent and attorney, have hereunto on this 14th day of July, 1906, set their hands.

CHARLES H. McDOWELL. [SEAL.]

[Seal of American Surety Company.]

AMERICAN SURETY COMPANY OF NEW YORK,
By ROB'T LE MASURIER, *Agent.*

Signed, sealed and delivered in the presence of
JOSEPH P. BRADY, *Clerk.*

168 *Notice of Appeal.*

Filed July 14th, 1906.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of CHARLES H. McDOWELL for Writs of *Habeas Corpus* and Certiorari.

CHARLES H. McDOWELL, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia; JOSEPH P. BRADY, Deputy Clerk of the District Court of the United States for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

SIRS: Please take notice that Charles H. McDowell petitioner above named hereby appeals to the Supreme Court of the United States from the final order made and entered on the 14th day of July, 1906, by the Honorable Nathan Goff, Judge of the Circuit Court of the United States, Fourth Judicial Circuit of Virginia, discharging his application for writs of *habeas corpus* and certiorari and from each and every part of said order.

Dated at the City of Richmond, State of Virginia, on the 14th day of July, 1906.

Respectfully,

JOHN J. VERTRESS,
JAMES C. BRADFORD,
JOHN S. MILLER,
Attorneys for Petitioner and Appellant.

169 *Petition for Appeal.*

Filed July 14th, 1906.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of CHARLES H. McDOWELL for Writs of *Habeas Corpus* and Certiorari.

CHARLES H. McDOWELL, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

The petition of the above named petitioner Charles H. McDowell for an order, allowing an appeal to the Supreme Court of the United States from the final order in the above styled cause, discharging the writs of *habeas corpus* and certiorari in this cause and remanding petitioner to the custody of the said Morgan Treat, United States Marshal.

Charles H. McDowell, the petitioner and appellant above named, feeling himself, aggrieved by the final order heretofore made and entered by this Court in this cause on the 14th day of July, 1906, whereby it was ordered that his petition for a writ of *habeas corpus*, directed to said Morgan Treat, United States Marshal, in and for the said District of Virginia, and his writ of certiorari, directed to Hon. Edmund Waddill, Jr., United States District Judge for said
170 District, commanding him to return all the proceedings, warrants, depositions, examinations, commitments and record of all proceedings against your petitioner to the Circuit Court of the United States, were, after the same had been duly granted and return made thereon by this Honorable Court, discharged, and petitioner was by said order remanded to the custody of said Morgan Treat, United States Marshal, as aforesaid.

Now come, Jno. J. Vertress and Jas. C. Bradford, his attorneys and counsel, praying this court for an order allowing your petitioner to prosecute an appeal from said final order of the United States Circuit Court to the Supreme Court of the United States, and according to the laws of the United States in that behalf made.

Your petitioner is advised by his counsel that *in* the proceedings referred to in the petition for writs of *habeas corpus* and certiorari, and the said order discharging the same have infringed the constitutional rights of your petitioner and that the commitment of your petitioner and the restraint of his person referred to in said petition and under said order is without authority of law and that the said United States District Judge acting as United States Commissioner, before whom your petitioner was arraigned, as set forth in said peti-

tion hereinbefore referred to had no jurisdiction to either require bail of petitioner or to commit petitioner in default thereof, and your petitioner desires in good faith to submit the constitutional questions and other questions involved to the Supreme Court of the United States for their determination.

And your petitioner will ever pray, etc.

JOHN J. VERTRESS,
JAMES C. BRADFORD,
JOHN S. MILLER,
Attorneys for Petitioner and of Counsel.

171 UNITED STATES OF AMERICA, *Eastern District of Virginia:*

Charles H. McDowell, being duly sworn on his oath, deposes and says that he is the petitioner above named, that the foregoing petition is true of his own knowledge, except as to those matters which are therein stated on his information and belief, and as to those matters, he believes them to be true

Sworn to before me this 14th day of July, 1906.

JOSEPH P. BRADY,
Clerk of the United States Circuit Court,
Eastern District of Virginia.

Assignment of Errors.

Filed July 14th, 1906.

In the Supreme Court of the United States.

In the Matter of the Petition of CHARLES H. McDOWELL for Writs of *Habeas Corpus* and Certiorari.

CHARLES H. McDOWELL, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

172 The petitioner, Charles H. McDowell, by John J. Vertress and Jas. C. Bradford and John S. Miller, his Counsel in connection with his petition of appeal herein, entered herein, to the Supreme Court of the United States, from the final order made and entered in the United States Circuit Court of the Fourth Judicial Circuit in and for the Eastern District of Virginia, discharging the writs of *Habeas Corpus* and Certiorari and remanding petitioner to the custody of the said Morgan Treat, Marshal, *and* makes and files the following assignment of errors:

1. The court erred in discharging the petitioner's writs of *Habeas Corpus* and Certiorari and remanding him to the custody of the United States Marshal.

2. In refusing to grant the prayer of said writs.

3. In refusing to discharge said petitioner.

4. In holding that the restraint of the petitioner's liberty is legal.

5. In holding that the restraint of your petitioner is not in violation of his substantial rights.

6. In holding that said alleged indictment or any count thereof stated an offence against the laws of the United States.

7. In holding that the alleged indictment, or any count thereof was sufficient upon which to base a warrant of removal.

8. In holding that there was sufficient evidence of probable cause.

9. In holding that the warrant of removal made by the United States District Judge for the Eastern District of Virginia was issued upon the finding of probable cause; and in not holding that said order & warrant of removal were unauthorized & void because said District Judge refused to receive or hear any evidence offered by petitioner.

10. In holding that the alleged indictment with proof of
173 identity was conclusive evidence of probable cause.

11. In holding that upon the introduction in evidence of the alleged indictment with proof of identity that the defendant, your petitioner, was not entitled to introduce evidence offered by him and in refusing to hear or receive evidence offered by him to show that the alleged offence, charged in said indictment and in each count thereof had not been committed by him in the State of Tennessee, in which state the indictment was found and in so holding, violating Article V and Article VI of the Amendments to the Constitution of the United States in that he was deprived of his liberty without due process of law.

12. In failing to hold that your petitioner is deprived of his liberty without due process of law in violation of Article V of the Amendments to the Constitution of the United States, in that said District Judge refused to hear or receive any evidence offered by your petitioner in that the complaint and evidence referred to herein, which were the sole authority for the petitioner's arrest and commitment as aforesaid failed to charge the petitioner with any crime against the laws of the United States.

13. In failing to hold that the petitioner's detention was in violation of Article V of the amendments to the Constitution of the United States in that the said United States District Judge, sitting as United States Commissioner and the United States District Judge has such jurisdiction to order the arrest and commitment of your petitioner, and that your petitioner is held to answer for a crime without any sufficient or valid indictment of a grand jury.

14. In failing to hold that restraint of your petitioner is in violation of Article IV of the Amendments to the Constitution of the United States, because it appears from the indictment upon
174 which the warrant in this case was issued that *in* was wholly void.

15. In failing to hold — the restraint of your petitioner is in violation of the provisions of Article IV of the amendments to the Con-

stitution of the United States for the reasons particularly specified in his petition for a writ of *habeas corpus*.

16. In holding that a warrant of removal should issue for the reason that the proceedings conclusively show, by the indictment that the venue for the facts alleged in the indictment is not and was not in the Middle District of the State of Tennessee or in the State of Tennessee.

17. In failing to hold that the restraint of your petitioner is in violation of the provisions of Article VI of the amendments to the constitution of the United States for the reason that upon the proof offered to be made and rejected by the United States District Judge, sitting as a commissioner, and the United States District Judge and this Honorable Court, sitting upon the hearing of the petition of *habeas corpus*, and by the averments of said petition which were not controverted, it was conclusively shown that the offences charged in the indictment were not committed in the Middle District of the State of Tennessee or in the State of Tennessee, and that he could not be lawfully tried by a jury of the State of Tennessee and of the Middle District of Tennessee where said indictment was found.

18. In holding that the warrant of removal was properly issued, as the record and proceedings conclusively show that the alleged offence, complained of in the indictment and the several counts thereof, did not occur within the Middle District of the State of Tennessee, or in the State of Tennessee, and that your pe-
175 titioner did not conspire to commit any offence within the State of Tennessee, or in the Middle District thereof.

19. In holding that your petitioner was lawfully in the custody of said Morgan Treat, United States Marshal in and for the Eastern District of Virginia, and was lawfully deprived of his liberty by him by due process of law.

20. For other errors appearing on the record, by reason whereof, the petitioner prays that the said order, discharging said writs of *Habeas Corpus* and Certiorari be reversed and the petitioner discharged from custody.

JOHN J. VERTRESS,
JAMES C. BRADFORD,
JOHN S. MILLER,
Attorneys for Petitioner and Appellant.

Appeal Bond.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of CHARLES H. McDOWELL for Writs of *Habeas Corpus* and Certiorari.

CHARLES H. McDOWELL, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

176 Know all men by these presents, that, we, Charles H. McDowell and James G. Tinsley his surety, are held and firmly bound unto the United States of America, in the full and just sum of Five hundred dollars to be paid to the United States, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this 14th day of July, 1906.

Whereas, lately, to-wit; on the 14th day of July, 1906, at the Circuit Court of the United States, in and for the Fourth Judicial Circuit, Eastern District of Virginia, in a proceeding therein pending, an order was entered discharging the writs of *habeas corpus* and certiorari, of the above named petitioner in the above mentioned proceeding and said petitioner having duly obtained an appeal from the said order to the Supreme Court of the United States and filed a copy thereof in the Clerk's office of said Circuit Court to review the same,

Now, The Condition of the Above Obligation, is such, that if the said petitioner Charles H. McDowell, shall prosecute said appeal to effect and shall answer all costs if he should fail to make said appeal good, then this obligation to be void; else to remain in full force and effect.

CHARLES H. McDOWELL. [SEAL.]
JAMES G. TINSLEY. [SEAL.]

Sealed, and delivered, and taken and acknowledged, this 14th day of July, 1906, before me,

JOSEPH P. BRADY, *Clerk.*

UNITED STATES OF AMERICA,
Eastern District of Virginia, To wit:

177 James G. Tinsley being duly sworn says that he is worth more than the sum of Five Hundred Dollars, over and above all his just debts and liabilities.

Sworn to before me this 14th day of July, 1906.

JOSEPH P. BRADY, *Clerk.*

Citation.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of CHARLES H. McDOWELL for Writs of *Habeas Corpus* and Certiorari.

CHARLES H. McDOWELL, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia; JOS. P. BRADY, Deputy Clerk of the District Court of the United States for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Judge L. L. Lewis, United States District Attorney for the Eastern District of Virginia; Jos. P. Brady, Clerk of the United States Circuit Court for the Eastern District of Virginia; Morgan Treat, United States Marshal in and for the Eastern District of Virginia; Hon. Edmund
178 Waddill, Jr., United States District Judge for the Eastern District of Virginia, and Jos. P. Brady, Deputy Clerk of the United States District Court for the Eastern District of Virginia:

You are cited and admonished to be and appear at the Supreme Court of the United States at the City of Washington, within thirty days from the date of this writ, pursuant to an appeal duly allowed by the Circuit Court for the Fourth Judicial Circuit, Eastern District of Virginia and filed in the Clerk's Office of said Court on the 14th day of July, 1906, in the cause entitled, in the manner of the petition of Charles H. McDowell for writs of *habeas corpus* and certiorari, Charles H. McDowell, appellant, *versus*, Morgan Treat United States Marshal in and for the Eastern District of Virginia, Jos. P. Brady, Deputy Clerk of the District Court of the United States in and for said Eastern District of Virginia, and Hon. Edmund Waddill, Jr., United States District Judge in and for said Eastern District of Virginia, Appellees, to show cause, if any, why the final order of said Circuit Court, rendered against the appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Hon. Nathan Goff, Judge of the United States Circuit Court, this 14th day of July, A. D., 1906.

NATHAN GOFF,
Judge of the Circuit Court of the United States.

Acceptance of Service by United States District Judge.

Legal service of the within Citation is hereby acknowledged this 21st July, 1906.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

179 *Marshal's Return.*

Executed this 23rd day of July 1906, by delivering in person in the City of Richmond, Va., a true copy of the within citation to the following named persons viz: L. L. Lewis United States District Attorney for the Eastern District of Virginia, Joseph P. Brady Clerk of the United States Circuit Court for the Eastern District of Virginia, Joseph P. Brady Deputy Clerk of the United States District Court for the Eastern District of Virginia.

MORGAN TREAT,
United States Marshal.

Further executed this 23rd day of July 1906, by delivering in person in the City of Richmond, Va. to Morgan Treat United States Marshal for the Eastern District of Virginia, a true copy of this citation.

MORGAN TREAT,
United States Marshal,
By M. J. ENRIGHT,
Office Deputy Marshal.

180 *Order Transmitting Record.*

And thereupon, it is ordered by the Court here that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the Supreme Court of the United States of America, and the same is transmitted accordingly.

Teste:

JOSEPH P. BRADY,
Clerk United States Circuit Court.

Clerk's Certificate.

THE UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

I, Joseph P. Brady, Clerk of the Circuit Court of the United States for the Eastern District of Virginia, do hereby certify that the foregoing is a full and true transcript of the record and proceedings of the said Circuit Court, together with all things thereunto relating, in the therein entitled cause.

In testimony whereof, I hereunto set my hand and affix the seal of the said Circuit Court of the United States for the Eastern District of Virginia, at Richmond, this 10th day of August, A. D. 1906.

[Seal United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Endorsed on cover: File No. 20,344. E. Virginia C. C. U. S. Term No. 379. Charles H. McDowell, appellant, *vs.* Morgan Treat, United States marshal in and for the eastern district of Virginia, *et al.* Filed August 14, 1906. File No. 20,344.

NOS. 369 TO 379, INCLUSIVE.

FILE COPY.

Supreme Court of the United States.

OCTOBER TERM, 1906.

Office Supreme Court,
FILED,
NOV 24 190
JAMES H. McKEN

James G. Tinsley, Appellant,
vs. No. 369.
Morgan Treat, United States Marshal, et al.

Wm. DeC. Kessler, Appellant,
vs. No. 370.
Morgan Treat, United States Marshal, et al.

Samuel T. Morgan, Appellant,
vs. No. 371.
Morgan Treat, United States Marshal, et al.

Austin B. Carpenter, Appellant.
vs. No. 372.
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Fortesque Whittle, Appellant,
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Frank E. Wilcox, Appellant,
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George Braden, Appellant,
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Frank S. Royster, Appellant,
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Charles F. Burroughs, Appellant,
vs. No. 378.
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Charles H. McDowell, Appellant,
vs. No. 379.
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BRIEF FOR APPELLANTS.

JOHN S. MILLER,
HENRY A. M. SMITH,
JAMES C. BRADFORD,
JOHN J. VERTREES,
ATTORNEYS FOR APPELLANTS.

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Supreme Court of the United States,

OCTOBER TERM, 1906.

James G. Tinsley, Appellant,
vs. No. 369.
Morgan Treat, United States Marshal, et al.

Wm. DeC. Kessler, Appellant,
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May it please the Court:

These are appeals in *habeas-corpus* proceedings, instituted to prevent the removal of appellants from the State of Virginia, to the State of Tennessee, for trial upon an indictment which had been returned against them and others, in the Circuit Court of the United States for the Middle District of Tennessee.

There are eleven cases. They are similar, and for that reason are heard as one.

They involve the question of the right of the "offender", the person arrested in removal proceedings, to adduce *evidence* to show that the Court of the district to which he is sought to be removed, has *no jurisdiction* over the alleged offense; to show the absence of probable cause.

STATEMENT.

On the 26th day of May, 1906, an indictment was returned by the grand-jury into the Circuit Court of the United States for the Middle District of Tennessee against thirty corporations, two partnerships, and twenty-five persons, as defendants.

This indictment contains six counts. In substance it avers that the defendants were and are engaged in the fertilizer

business in the United States, and, all together, control ninety per cent. of the business, and that they do an inter-state commerce business.

It charges that they constitute what is popularly known as the "Fertilizer Trust" and that they sought to control the price of fertilizers in eight of the Southern States.

Four counts (the first, second, fourth, and fifth) charge the defendants with the offense of violating Section 1 of the anti-trust act, commonly known as the "Sherman Act."

Two counts (the third and sixth) charge them with violating the general conspiracy law, or Section 5440 of the Revised Statutes of the United States.

This general statement of the nature of the indictment is sufficient for the present, but it will be particularly described later in another connection.

The appellants are officers and agents of the accused corporations, and none of them are citizens of Tennessee. Upon complaint made by Morgan Treat, U. S. Marshal (the appellee) apellants were arrested at Richmond in the Eastern District of Virginia, and taken directly before the District Judge; that is, they were not first taken before a Commissoner, and committed by him, and an application then made to the Judge of the District for an order for their removal to Tennessee. Consequently, Judge Waddill, the District Judge, acted in a dual capacity—as committing Magistrate, and also as ordering Judge.

In these proceedings before the District Judge, the appellants (the "offenders" of the statute) admitted that they were the persons named in the indictment. The Government offered as evidence, a certified copy of the *indictment, and nothing more;* and thereupon asked for an order to be made for the commitment and removal forthwith of the prisoners.

(Rec., p. 120.) As the cases are similar, it will be sufficient to state that which happened in one—Mr. Tinsley's case.

When the Government asked for the order of removal Mr. Tinsley offered himself as a witness, and asked to be sworn. Counsel for the Government objected, upon the ground that the indictment was *conclusive*—that "no evidence is admissible here to impeach it." (Rec., p. 7.) Mr. Tinsley's counsel then stated what he (Tinsley) would prove by himself as a witness, and by other witnesses then and there present—which was, in substance, that Mr. Tinsley had never been guilty of *any* of the acts or things charged, in Tennessee, or elsewhere. (Rec., pp. 7, 8, 10.) The objection of the Government was renewed.

The District Judge refused to permit the witnesses to be sworn, or to hear their evidence; and he made an order for the appellant's commitment and removal. He held that *under the laws of Virginia,* there was no right to a preliminary examination prior to the trial upon the merits, and consequently that there was none under the laws of the United *States;* and that it was his *duty* to order the removal. (Rec., p. 8.)

Mr. Tinsley then presented his petition to the Circuit Court (held by Judge Goff) for writs of *habeas-corpus* and *certiorari.* Both writs were granted and, *issued,* and returns duly made. (Rec., pp. 63, 64, 65.)

The petition exhibited a copy of the record of the proceedings before the District Judge, and also *stated the evidence* which the appellant offered and asked permission to give. (Rec., pp. 7, 8.)

It averred that Mr. Tinsley, the appellant, never did, or committed, or engaged in, any of the offenses, acts, things, or transactions charged, *in the Middle District of Tennessee,*—

not even in the making of the indorsement of a certain check, which was set forth in the indictment as an "overt act" on his part. (Rec., pp. 10, 28.)

The same proceedings were had in the Circuit Court upon the petition as those that took place before the District Judge—that is, the Government offered the copy of the indictment, and then rested; Mr. Tinsley offered himself; and his counsel stated, when objection was made, what he and witnesses then present, would testify; the Court refused to hear the evidence, ordered the removal; and Mr. Tinsley excepted, assigned errors, and appealed. (Rec., pp. 126, 131.)

ASSIGNMENT OF ERRORS.

The Court below erred in these respects, namely:

1. In discharging the petitioner's writs of *habeas-corpus* and *certiorari* and remanding him to the custody of the United States Marshal.
2. In refusing to grant the prayer of said writs.
3. In refusing to discharge said petitioner.
4. In holding that the restraint of the petitioner's liberty is legal.
5. In holding that the restraint of your petitioner is not in violation of his substantial rights.
6. In holding that said alleged indictment or any count thereof stated an offense against the laws of the United States.
7. In holding that the alleged indictment, or any count thereof was sufficient upon which to base a warrant of removal.

8. In holding that there was sufficient evidence of probable cause.

9. In holding that the warrant of removal made by the United States District Judge for the Eastern District of Virginia was issued upon the finding of probable cause; and and in not holding that said order and warrant of removal were unauthorized and void because said District Judge refused to receive or hear any evidence offered by petitioner.

10. In holding that the alleged indictment with proof of identity was conclusive evidence of probable cause.

11. In holding that upon the introduction in evidence of the alleged indictment with proof of identity that the defendant, your petitioner, was not entitled to introduce evidence offered by him and in refusing to hear or receive evidence offered by him to show that the alleged offense, charged in said indictment and in each count thereof had not been committed by him in the State of Tennessee, in which State the indictment was found and in so holding, violating Article V and Article VI of the Amendments to the Constitution of the United States in that he was deprived of his liberty without due process of law.

12. In failing to hold that your petitioner is deprived of his liberty without due process of law in violation of Article V of the said Amendments to the Constitution of the United States, in that said District Judge refused to hear or receive any evidence offered by your petitioner in that the complaint and evidence referred to herein, which were the sole authority for the petitioner's arrest and commitment as aforesaid failed to charge the petitioner with any crime against the laws of the United States.

13. In failing to hold that the petitioner's detention was in violation of Article V of the Amendments to the Constitu-

tion of the United States in that the said United States District Judge, sitting as United States Commissioner and the United States District Judge has such jurisdiction to order the arrest and commitment of your petitioner, and that your petitioner is held to answer for a crime without any sufficient or valid indictment of a grand jury.

14. In failing to hold that restraint of your petitioner is in violation of Article IV of the Amendments to the Constitution of the United States, because it appears from the indictment upon which the warrant in this case was issued that it was wholly void.

15. In failing to hold that restraint of your petitioner is in violation of the provisions of Article IV of the Amendments to the Constitution of the United States for the reasons particularly specified in his petition for a writ of *habeas-corpus.*

16. In holding that a warrant of removal should issue for the reason that the proceedings conclusively show, by the indictment that the venue for the facts alleged in the indictment is not and was not in the Middle District of the State of Tennessee or in the State of Tennessee.

17. In failing to hold that the restraint of your petitioner is in violation of the provisions of Article VI of the Amendments to the Constitution of the United States, for the reason that upon the proof offered to be made and rejected by the United States District Judge, sitting as a Commissioner, and the United States District Judge and this Honorable Court, sitting upon the hearing of the petition of *habeas-corpus,* and by the averments of said petition which were not controverted, it was conclusively shown that the offenses charged in the indictment were not committed in the Middle District of the State of Tennessee or in the State of Ten-

nessee, and that he could not be lawfully tried by a jury of the State of Tennessee and of the Middle District of Tennessee where said indictment was found.

18. In holding that the warrant of removal was properly issued, as the record and proceedings conclusively show that the alleged offense, complained of in the indictment and the several counts thereof, did not occur within the Middle District of the State of Tennessee, or in the State of Tennessee, and that your petitioner did not conspire to commit any offense within the State of Tennessee, or in the Middle District thereof.

19. In holding that your petitioner was lawfully in the custody of said Morgan Treat, United States Marshal in and for the Eastern District of Virginia, and was lawfully deprived of his liberty by him by due process of law." (Rec., pp. 132, 133.)

ARGUMENT.

Both the Circuit and the District Judges have stated the grounds of their decisions.

The District Judge was of opinion that *under the laws of Virginia* there is no right of preliminary examination prior to the trial upon the merits, and that inasmuch as he was sitting in *Virginia,* it was his *duty* to order a removal, without hearing evidence to contradict the indictment. (Rec., p. 121.)

The Circuit Judge said that the District Judge had acted "in conformity with like proceedings as provided for in criminal actions in the State of Virginia." He was of the opinion that the indictment was good, and that it alleges a conspiracy such as is prohibited by the laws of the United States, and also states that an overt act was done in the Mid-

dle District of Tennessee. But the ground upon which his decision is placed, is, that while probable cause must be shown in order to obtain a removal, a copy of the *indictment* shows it; and that inasmuch as the copy of the indictment alone, was sufficient in *Beavers vs. Henkel* (194 U. S., 73) it is sufficient here. He said.

> "While it is true that the order to remove for trial should only be issued in cases where probable cause has been shown, it is equally true that a certified copy of the *indictment,* with proof of the identity of the party accused, has been in a number of well considered cases, held to establish probable cause, and to authorize the warrant. of removal. It must be conceded that the authorities are conflicting; but to my mind the path that we should follow has been plainly indicated by the opinions of that great tribunal, whose mandates we all obey, whose judgments are the supreme law of the land. In *Beavers vs. Henkel* (194 U. S., 73) the case *rested* on the efficacy of the indictment; *for no other evidence of guilt was offered.* The indictment was held to be *prima facie* evidence of the existence of probable cause. It satisfied the requirements of the Constitution, and the laws made thereunder. Why should not the indictment in the case we now have under consideration serve the same purpose? The testimony tendered is, as I understand this case, immaterial, and the identity of the accused is admitted. His guilt or innocence is not to be ascertained by testimony offered in this jurisdiction, in connection with questions involved in the proceedings relating to the warrant of removal, or this writ of *habeas-corpus.* That matter must go to the jury empanelled by the Court in which the indictment was returned."
>
> Rec., p. 125.

It will be hereinafter shown, as we believe, that neither of these reasons is sufficient. At the same time it is conceded that insufficient reasons may sometimes be given to support conclusions which are sound. For that reason, both the reasons and the conclusions will be discussed in this brief.

And first, as to the laws of Virginia:

In the State of Virginia where an indictment has been found and a *capias* issues for the arrest of the defendant, there is no inquiry to be made. (Code, § 4003.)

But where no indictment has been found, and a person is arrested for an indictable offense, he must be taken before a magistrate for preliminary examination, and it is the duty of that magistrate to *inquire* whether or not there is sufficient cause for charging him with the offense. (Pollard's Code of Virginia's Anno. Vol. 2, §§ 3955, 3058, 3969.)

We think it may be safely stated that there is no State in which a different rule has ever prevailed, and that this was the law in the various States at the time the Federal Statute was enacted. If so, it is obvious that the proceedings referred to in the statute, are such as prevail in cases where magistrates are making preliminary examinations to ascertain whether or not there exists probable cause.

The Federal Statute however makes a provision not made by the statutes of any State. Inasmuch as statutes are to be interpreted in the light of all that *can* be done under them, (194 U. S., 83) and not in the light of what a just, broad-minded, prosecuting attorney *probably would* do under them, that part of the Federal Statute which requires the direction of the Judge of the district, has been construed (as hereinafter shown) to call for *judicial,* rather than ministerial action.

A Justice of the Peace, or Commissioner of Virginia has the power, upon a preliminary hearing, to bind the offender to appear before the proper Court in the county where the offense was committed, or cause him to be delivered to the Sheriff to be taken there.

But a Commissioner or Justice sitting under Section 1014 of the Federal Statutes, has *no power* to order a removal. "His functions are practically the same as those of an examining magistrate in an ordinary criminal case, and if the complaint upon which he acts, or the indictment offered in support thereof, contains the necessary elements of the offense, it is sufficient, although a more critical examination may show that the statute does not completely cover the case." (*Benson vs. Henkel,* 198 U. S., 11.) He may hold, or commit the offender, but *he cannot order a removal.* Another affirming judgment is required. The *Judge* of the district only can make an order like that. Consequently that part of Section 1014 which says the proceedings are to be conducted "agreeably to the usual mode of process against offenders in such State" relates alone to the *procedure* before the *Commissioner.* It has no relation to the proceedings before the Circuit Court upon *habeas-corpus.* (*Hyde vs. Shine,* 199 U. S., 85). And for that same reason it can have no relation to the hearing before the Judge of the district. A *Federal* Statute makes it *his duty,* to order the removal, and the "offender's" *right* to have *him* to do it; and that universal Federal Statute cannot be neutralized by the *condition* of the criminal laws of a particular State. The fact that Virginia denies to offenders brought before her Commissioners, the right to have an inquiry into the existence of probable cause, [if it were a fact] is no reason why an offender against Federal law, shall be denied the right which a *Federal Statute*

gives him, because the Federal Judge chances to sit in Virginia.

Nor is the reason upon which the Circuit Judge's action is based sufficient. The fact that the copy of the indictment was held to be sufficient in *Beavers vs. Henkel* (194 U. S., 73) is no ground for holding a copy sufficient here, for the reason that *the cases are unlike.* In that case the "offender" did *not* offer evidence to contradict the indictment, or to show the absence of probable cause. He sought to penetrate the grand-jury room, to give evidence of what happened there; and this Court refused to permit that to be done. It was held that *such* evidence was incompetent, and that the offender would not be permitted by such methods to ascertain the Government's case, and "prepare the way" for his defense. The evidence was rejected because it related to the *proceedings* before the grand-jury, not because it went to the merits and tended to show the absence of probable cause.

In the cases now under consideration, the appellants offered no evidence as to the proceedings before the grand-jury. They offered evidence going to the merits—evidence which would prove that they were innocent of the crime charged and that the Court in Tennessee had *no jurisdiction* to try them therefor; that the alleged offenses were not committed there. This important distinction appears to have escaped the sagacity of the learned Circuit Judge.

In this connection it should be observed that no attempt was made to present evidence which would penetrate the grand-jury room, and reveal its secrets and vitiate its proceedings.

It is also to be remarked that there is no question here as to the power of the Circuit Court to grant or refuse, at pleasure, the writ of *certiorari.* The writ was granted.

Neither is there here any question of *conflicting* evidence. No evidence is to be weighed, because the appellants were not permitted to adduce their evidence.

As will be observed, these cases squarely present the question of the *conclusiveness* to be attached to an indictment as "evidence," in removal cases. Stated in the form of a proposition, it is this:

In *habeas-corpus* removal proceedings, instituted to prevent the removal of an "offender" from the district of his residence in one State, to a district in another State for trial under an indictment found in the latter State, a certified copy of the indictment is not *conclusive,* and it is open to the "offender" to show the absence of probable cause, and that the Court has no jurisdiction.

Even if the Government had not "rested" after presenting a copy of the indictment, but had also presented witnesses whose evidence tended to show that the appellants had committed the crime of conspiracy against trade, it is obvious that appellants might (if allowed to do so) have met it with evidence that overwhelmingly contradicted that of the Government; or, without assailing it at all explained it entirely away; or, with evidence that the crime was not committed in Tennessee, and therefore the Court was without jurisdiction. It is equally clear that evidence which *explained* the Government's evidence, or which showed the Court to be without jurisdiction, would not require the District Judge either to *weigh* conflicting evidence, or to *try* the case. This, we concede, could not be said in a case where the offender's evidence *contradicts* that which the Government has offered. Yet in that case it might be equally as convincing to the District Judge. For example: Suppose the Government to present a witness who testifies positively and unequivocally

that he saw the accused commit the offense for which he stands indicted. This makes out not only a *prima facie,* but a clear, case of guilt. But assume further that witnesses of high character, are presented who prove that on the very day it is alleged the prisoner committed the offense he was with them in London. In this case the District Judge would have to *weigh* the evidence, and in our view it is the *right* of the "offender" to have him do it. Nevertheless if he did do it, and found for the Government, this Court perhaps would not reverse on *habeas-corpus* however much it might be convinced that he was away, and innocent. Even though the finding and determination of the District Judge, as to the *existence* of probable cause, may be final and conclusive, it is the right of the accused to have it; for it may, and in the case supposed ought to, be in his favor. No such question is presented here. The Government presented no evidence. It was content to rest upon the copy of the indictment alone; to rely upon something that is really not evidence at all. And the appellants were not allowed to present anything in the way of evidence. They were not even allowed to be sworn. They did not seek to contradict any of the Government's evidence, for it introduced none to be contradicted. The Government did present a copy of an indictment charging that appellants committed the crime of conspiracy in Tennessee. They did ask to be permitted to show by evidence that they had done no such thing, and therefore that the Court had no jurisdiction to indict and try them. Appellants asked to be permitted to do this, because this Court has said that if the evidence given fails to show any offense, or if it appear that the offense was not committed or triable, *in the district to which the removal is sought,* there is *no jurisdiction* either to

commit the accused or to order his removal. (*Greene vs. Henkel,* 143 U. S., 249, 261.)

It is not necessary to consider the assignment of errors in detail, inasmuch as they all rest upon the same propositions.

PROPOSITION I.

In habeas-corpus removal proceedings instituted to prevent the removal of an "offender" under Section 1014 *of the Revised Statutes, from his residence in one State, to a district in another State, for trial under an indictment found in the latter State, when a certified copy of the indictment is the only evidence introduced by the Government to show the existence of probable cause, it is the right of the "offender" to present evidence that proves the absence of probable cause; that he is innocent of the offense charged in the indictment, or that the Court has no jurisdiction.*

This right exists also on the hearing before the Judge of the district upon an application to him for an order of removal.

The statute (§ 1014 R. S.) provides that when an "offender" is committed in any district other than that where the offense is to be tried, it shall be the duty of the Judge of the district to issue a warrant for his removal. That was enacted many years ago, and long before the era of railways and rapid transit. (U. S. Stats., 1789, Ch. 20; 1793, Ch. 22; 1842, Ch. 188.) The difficulties of the situation, the burden which existing conditions at that time put upon an "offender", and the jealousy with which the right to be tried by a jury of the vicinage had always been regarded, were the reasons which led to the enactment of this statute.

The reason why trial must be had where the crime was

committed is that, as a rule, the right to be tried by a man's neighbors, or those who know something about him will thereby be secured.

An ordinary Commissioner cannot direct the removal of an offender. He may commit or imprison, but there can be no removal until it has been ordered by the *Judge* of the district. That order of removal is a *judicial* act, rather than a ministerial one. (*Beavers vs. Henkel*, 194 U. S., 73). The reason why it was so established has been given in more than one opinion. It is this: In controversies between the Government and an individual the latter is entitled to reasonable protection. The enforcement of the criminal law in such cases must not be oppressive. Removal to a distant State is no light matter, imposing as it does an expense in preparation for defense, generally beyond the ability of the defendant to pay. (*Hyde vs. Shine*, 199 U. S., 62).

"In a country of such vast extent as ours it is no light matter", said Dillon, J., in *Buell's Case* (4 Fed. Cas., No. 2102) "to arrest a supposed offender, and on a mere order of an inferior magistrate remove him hundreds, it may be thousands, of miles for trial".

It is the *constitutional right* of the citizen to be tried in the district in which the offense was committed, and not elsewhere, and therefore the law, says Judge Dillon, "wisely requires the *previous sanction* of the District *Judge* to such removal." (4 Fed. Cas., No. 2102.)

The inferior Federal Judges, with perhaps not more than two exceptions, have construed this statute, and acted under it, according to its full meaning and spirit.

In *Greene's Case* (52 Fed. Rep., 106) Judge Jackson, subsequently a Justice of this Court, said that

"It is well settled that upon application for an order of removal under Section 1014 R. S., the District Court or Judge may properly look into the indictment to ascertain whether an offense against the United States is charged, and whether the Court to which the accused is sought to be removed has jurisdiction of the same. In such cases the Judge exercises something more than a mere ministerial function involving no judicial discretion. *The liberty* of the citizen, and his *general right* to be tried in a tribunal or forum of his domicile, imposes upon the Judge the *duty* of considering and passing upon those questions. Such has been the uniform practice of the Federal Courts."

It was thus expressed by another Judge in an earlier case:

"But I have no doubt the Judge, in his sound discretion, may go into the whole case, if necessary, to enable him to determine whether the party is to be removed from his home to a distant part of the country. This is a law in restraint of liberty, and, like all such laws of this character, while the very substance of the law is not to be construed away, yet, it is to be strictly construed and strictly pursued. The Government asking the removal, is required to fully comply with the law. The question, then, which presents itself to the Judge, is where the case is to be tried, where a trial can be had. Before a trial can be had before any Court of the United States, such Court must have jurisdiction over the place, the person, and the subject matter."

27 Fed. Rep., 609.

The following are cases in which the Judge of the district acted upon this construction and looked into the case,

and heard evidence, and determined whether there existed probable cause:

In re Doig, 4 Fed. Rep., 194, 195;
In re Price, 83 Fed. Rep., 830;
United States vs. Pope, Fed. Cases, No. 16069;
In re Wood, 95 Fed. Rep., 288;
United States vs. Fowkes, 49 Fed. Rep., 50; 53 Fed. Rep., 13;
In re Wolf, 27 Fed. Rep., 606;
In re Greene, 52 Fed. Rep., 104;
United States vs. Greene, 100 Fed. Rep., 941;
United States vs. Lee, 84 Fed. Rep., 626;
United States vs. Greene, 108 Fed. Rep., 816;
In re Dana, 68 Fed. Rep., 886;
Ex parte Rickett, 61 Fed. Rep., 203;
Price vs. McCarty, 89 Fed. Rep., 84;
United States vs. Rodgers, 23 Fed. Rep., 661;
United States vs. Brawner, 7 Fed. Rep., 86;
In re Buell, 4 Fed. Cases, No. 2102;
United States vs. Voltz, Fed. Cases, No. 16627;
United States vs. Haskins, Fed. Cases, No. 15322;
United States vs. Shepard, Fed. Cases, No. 16273;
In re Alexander, Fed. Cases, No. 162;
In re Beshears, 79 Fed. Rep., 70;
In re Terrill, 51 Fed. Rep., 213;
In re Corning, 51 Fed. Rep., 205.

Various questions involved in removals have been decided by this Court.

HORNER VS. UNITED STATES,
143 U. S., 207 (1892).

Horner was indicted in the District Court of the United States for the Southern District of Illinois for violating Section 3894 of the Revised Statutes relating to lottery circulars. He was arrested in New York on a bench war-

rant, for the purpose of removing him to Illinois for trial. He was taken before a Commissioner, and evidence was heard, and he was committed. Application was thereupon made to the District Judge for a warrant of removal. One objection interposed by Horner was that the offense if committed, was wholly committed in New York, and that the offense charged in the indictment was therefore not legally triable in Illinois. The District Judge inquired into all this, and held that before a District Judge orders a person to be removed in such cases he should "look into" the indictment so far as to be satisfied that the offense charged "is such an offense as may be lawfully tried in the forum to which it is claimed the accused should be removed". (44 Fed. Rep., 677.)

The District Judge, however, found that the offense had been committed in both States. That is, it had been begun in one and was completed in the other, and was therefore a proper case for removal under Section 731 of the Revised Statutes.

Horner thereupon sued out a writ of *habeas-corpus* from the Circuit Court, but it was dismissed upon the hearing, and Horner appealed to this Court. The action of the Circuit Court was affirmed; but it was held that the District Judge, in exercising his jurisdiction under Section 1014 of the Revised Statutes, had a right to determine whether the offense was committed within the jurisdiction of the Federal Court for the Southern District of Illinois; also that his determination of that question *was reviewable* by writ of *habeas-corpus*. (148 U. S., 214.)

It was also held that the decision of the Commissioner as to the identity of Horner was a question of fact which would not be reviewed on *habeas-corpus*.

GREENE vs. HENKEL,
183 U. S., 249 (1902).

Greene was indicted in the District Court of the United States for the Southern District of Georgia. He was arrested and taken before a Commissioner in the State of New York. The Commissioner ruled that the copy of the indictment was conclusive evidence of probable cause and refused to hear any evidence on the part of the defendant; and thereupon application was made to a District Judge in New York for an order for Greene's removal. That Judge held that the Commissioner should have heard evidence; and remanded the case to him for that purpose. The evidence was then fully gone into by the Commissioner, and he decided upon it that there was probable cause. Application was again made to the District Judge for an order of removal. He also held that the evidence showed the existence of probable cause and made the order accordingly. (108 F. R., 116; 100 F. R., 941.)

Greene thereupon presented his petition to the Circuit Court for the writ of *habeas-corpus*. The evidence taken before the Commissioner, and which was also before a District Judge was not annexed to the petition, neither was there any application for the writ of *certiorari* to bring it up. As a consequence the evidence was no part of the record in the *habeas-corpus* case, and therefore was not before either the Circuit Court or the Supreme Court. This Court thereupon expressly *assumed* that the finding of probable cause was sustained by competent evidence. (Page 259.) The only point for decision by this Court, in the case, was whether the New Yourk Judge had jurisdiction. The ground on which his jurisdiction was assailed was that the indictment was so defective as to be void. The point made was that the laws

were not complied with in *drawing* the grand-jury which found the indictment, but this Court held *that* to be a question exclusively for the trial Court. This Court also said, however, that where an indictment charges no offense against the laws of the United States, or the evidence given fails to show any offense, or if it appear "that the offense was not committed or triable in the district to which the removal is sought", there would be *no jurisdiction* either to commit the person, or to order his removal. (183 U. S., p. 261.)

BEAVERS VS. HENKEL,
194 U. S., 73 (1904).

Beavers was indicted in the Circuit Court of the United States for the Eastern District of New York. Upon a warrant duly issued he was arrested in the Southern District of that State. On the trial before the Commissioner the Government offered a copy of the indictment as evidence of probable cause. The only evidence that Beavers offered was evidence relative to the *proceedings* before the grand-jury which found the indictment—evidence tending to show what transpired before the grand-jury. This Court said that such evidence was "not competent" and that a defendant could not in this way ascertain what testimony the Government may have against him, and thus *prepare the way* for his defense.

The Court held that inasmuch as the *only* evidence in the case was the copy of the indictment, it was unnecessary to decide whether a copy of an indictment shall be conclusive proof of the existence of probable cause. That it was sufficient to decide, and the Court therefore did decide, that in such case the indictment was *prima facie* evidence, and in *that* case, therefore, sufficient evidence of probable cause.

In the course of the opinion, which was delivered by Mr. Justice Brewer, it is said:

> "It may be conceded that no such removal should be summarily and arbitrarily made. There are risks and burdens attending it which ought not to be needlessly cast upon any individual. These may not be serious in a removal from New York to Brooklyn, but might be if the removal was from San Francisco to New York. And statutory provisions must be interpreted in the light of all that *may* be done under them. We must never forget that in all controversies, civil or criminal, between the Government and an individual the *latter* is entitled to *reasonable protection.* Such seems to have been the purpose of Congress in enacting Section 1014, Rev. Stat., which requires that the order of removal be issued by the Judge of the district in which the defendant is arrested. In other words, the removal is made a JUDICIAL, rather than a mere *ministerial,* act."

BENSON vs. HENKEL,
198 U. S., p. 1 (1905).

In this case the Court held that *in general* it is not for the committing Commissioner to inquire into the validity of an indictment; that that is a question to be determined by the Court in which the indictment was found; and for the reason that a Commissioner is "not presumed to be acquainted with the niceties of criminal pleading". At the same time the Court said that while this was the general rule, yet if upon inspection of the indictment, it sets forth no crime against the United States, or a different crime from that alleged as the basis for proceedings, the Commissioner should not consider it as sufficient ground for removal. The dissenting opinion (in which Justices Day, McKenna, Peck-

ham and White concur) holds that the Commissioner must pass upon the sufficiency of the indictment; that while no technical objection should prevail against the indictment, it should be considered, and if it charge no offense, it was the duty of the Commissioner not to order a removal.

Although it is to be conceded that the ordinary Commissioner is not presumed to be skilled in the "niceties of criminal pleading", this cannot be said of the District Judge. The District Judge to whom application is made for a warrant of removal, is as capable of passing upon all questions as the District Judge of the Court in which the indictment was found; and the law not only requires the judgment of the unskilled Commissioner, but *also* that of a District Judge skilled and learned in the law, in order to remove an indicted person from one State to another for trial. The judgment of the District Judge is required. Why? What is the reason? There can be but one reason and it is this: that in view of the hardship and inconvenience of improper removals, the law meant to give the *defendant* the benefit of the judgment of a learned *Judge* as well as that of an unskilled Commissioner.

HYDE VS. SHINE,
199 U. S., 62 (1905).

Hyde was indicted in the Supreme Court of the District of Columbia. He was arrested at his home in California. The Commissioner committed him, and the District Judge made an order for his removal. Horner thereupon applied to the Circuit Court for a writ of *habeas-corpus,* but his application was denied, and he appealed to this Court. The petition for a writ of *habeas-corpus* did not set forth the evidence relied on to show probable cause. The Circuit

Court refused to issue a writ of *certiorari* to bring up the record of the evidence before the Commissioner. The petition did aver that the evidence before the Commissioner showed that petitioner was never in the District of Columbia and could not have committed the offense charged, and the minority of this Court thought its averments were sufficient; but it was held by the majority that the petition was defective in that it did not "set forth" the evidence. The Commissioner did receive evidence in behalf of Hyde upon the hearing before him, and upon such evidence found the existence of probable cause. Consequently there was no question before this Court as to the right of Hyde to introduce evidence as against the certified copy of the indictment; for his evidence was received and considered. The question in the case was, Whether he was entitled to the writ of *certiorari* as a matter of right? The majority held that he was not. That it was entirely discretionary with the Circuit Court to grant or to refuse it; and that as it had been refused, he had no legal ground of complaint, and that he ought to have *set forth* the evidence in his petition if he wanted to get the question of probable cause before the Court. The minority held that he had a *right* to the writ of *certiorari,* and that its issuance was not within the arbitrary discretion of the Circuit Court, and that the averments of the petition were sufficient. In the minority opinion, it is said:

> "The right is none the less, when the want of probable cause rests upon conclusive evidence of the absence of the defendants from the district at the time when the indictment alleges the conspiracy was formed in such district. If defendants were not then there, they could not be guilty of the crime charged in the indictment. The case is an extreme illustration

of the very great hardship involved in sending a man 3,000 miles across the continent, from California or Oregon, to this district for trial, where he is to bring his witnesses, and where on such trial it will appear that the Court must direct an acquittal, because the averment of the formation of the conspiracy at Washington, D. C., is shown to be false to a demonstration.

"The expense to a defendant in his necessary preparation for trial, and in procuring the attendance of witnesses in his behalf from such a distance, must necessarily be enormous, and in many, if not in most cases, utterly beyond the ability of a defendant to pay. The enforcement of the criminal law should *not be made oppressive* in such cases, and, therefore, when it appears there was no probable cause to found the indictment upon, the order of removal should be refused."

Text-writers understand the law to be as appellants insist (Hughes' Crim. Proc., §§ 15-17, p. 29), and so does the Attorney-General of the United States. In his annual report in 1904, he said:

"Much embarrassment in the administration of the law has arisen from the inability of the United States to bring an offender to the place and the Court where by the Constitution and laws the accusation against him must be tried. By the Constitution the trial of all crimes must be held in 'The State and district wherein they shall have been committed.' It frequently happens that persons accused are not found within the limits of the district where the offenses alleged against them are triable. The frequency of such absence increases with the gravity of the accusation, and where it consists in a conspiracy almost invariably one or more of the alleged offenders are without the jurisdiction of the district.

"In the States of the Union it is the usual, if not the invariable practice, that the process of the Superior Courts, for the apprehension of one accused of crime against the State, runs everywhere within the State, even though the territorial jurisdiction of the trial Court may be limited. No constitutional reason is perceived why the criminal process of any of the Courts of the United States should not in like manner run throughout its territorial extent. The law regulating the apprehension of offenders against the laws of the United States is found in Section 1014 of the Revised Statutes, which is as follows:

" 'For any crime or offense against the United States the offender may, by any Justice or Judge of the United States, or by any Commissioner of a Circuit Court to take bail, or by any Chancellor, Judge of a Supreme or Superior Court, Chief or First Judge of Common Pleas, Mayor of a city, Justice of the Peace, or other Magistrate, of any State where he may be found, and agreeably to the usual mode of process against offenders in such State, and at the expense of the United States, be arrested and imprisoned, or bailed, as the case may be, for trial before such Court of the United States as by law has cognizance of the offense. Copies of the process shall be returned as speedily as may be into the Clerk's office of such Court, together with the recognizance of the witnesses for their appearance to testify in the case. And where any offender or witness is committed in any district other than that where the offense is to be tried it shall be the duty of the Judge of the district where such offender or witness is imprisoned seasonably to issue, and of the Marshal to execute, a warrant for his removal to the district where the trial is to be had.'

"The usual practice which is followed in such cases, is that when an indictment by a grand-jury is

returned a warrant issue to the Marshal for the arrest of the defendant. If after search that officer is unable to find the defendant within his district the warrant is returned to Court with the endorsement that the defendant is 'not found.' If the defendant is believed to be in another district, the United States Attorney of that district is informed and makes the fact known to the proper official under Section 1014 (usually a United States Commissioner) whereupon a warrant for his arrest is issued. After the presence of the accused is secured, if there is a finding adverse to him by the Commissioner, opportunity for bail is given, and if that is not furnished an order for the removal of the prisoner is sought from the District Judge. It has always been the *contention* of *this* department that the authentication of the indictment and the proof of the identity of the defendant are *conclusive* ground of removal. *This contention has, however, not been supported by the decisions of the Courts,* notably of the districts within the State of New York. An accurate statement of the effect of the decisions in those districts is found in *United States vs. Greene* (100 Fed. Rep., 941, 943), in the following language:

" 'That the proceeding for commitment and removal under Section 1014 is an original proceeding, to be conducted according to the laws of the State in similar proceedings before committing Magistrates; that the object of the proceeding is to enable the Commissioner to ascertain for himself whether, from the proof of facts and circumstances produced before him, there is probable cause to believe the defendants guilty of the offense charged; that the mode of proceeding in such cases is precisely the same, whether there is an indictment or no indictment (see also *Price vs. McCarty* (32 C. C. Am., 162; 89 Fed., 84 per Wallace, C. J.); and that an indictment, when

offered by the prosecution, is at best but evidence, in no way conclusive, and in truth is but secondary evidence (which to a certain extent is admissible on such examinations); and that although the copy of an indictment may be treated as an affidavit, it is nevertheless to be judged by the same rules as other affidavits and given weight only according to the nature and character of its averments, and the facts and circumstances which it sets forth, if any, in a manner sufficient to warrant the conclusion of probable cause to believe the accused guilty.'

"In accordance with the principles thus enunciated, the defendant is entitled to *a hearing and trial* before the Commissioner and an appeal from his decision, upon all the evidence, to the District Judge to whom application is made for removal. This gives a further opportunity for an indirect appeal to the Supreme Court by an application for a writ of *habeas-corpus* which results in delay even though the appeal be unavailing.

Greene vs. Henkel, 183 U. S., 249;
Beavers vs. Henkel, 194 U. S., 73".
(Rep. Att'y-Gen'l, 1904, p. 3.)

This is repeated in the Attorney-General's Report for 1905, p. 7.

The question of jurisdiction under the Federal Constitution is one far-reaching and fundamental. Under the statute, the party accused, is to be bound over for trial before such Court of the United States *as by law has cognizance of the offense.* Under the Constitution, the only Court of the United States which has cognizance is a Court of the United States sitting and trying the case in the State and district

wherein the crime shall have been committed. If therefore, the application to the Magistrate be to commit the prisoner for trial in a State and district in which the crime shall not have been committed, it is evident that the application would have to be refused. The injunctions of the law—constitutional and statutory—are imperative.

1. The accused can be tried only in the State and district in which the crime shall have been committed.

2. He can be bound over for trial or removal only to that particular specific State and district.

This also, it may be said, depends upon "probable cause," but it is a probable cause entirely independent of probable cause as to the guilt or innocence of the prisoner. Probable cause must exist and be brought to the attention of the Commissioner or Judge on two points.

First, probable cause that the district to which it is sought to remove the prisoner for trial is the proper district in which under the Constitution he is to be tried, and second, probable cause, whether or not the prisoner is guilty of the offense. The effect of an indictment found as proof of probable cause before the Commissioner has also been adjudicated by this Court.

In the cause of *Beavers vs. Henkel* (194 U. S., p. 73), the question came before this Court: It was there claimed on behalf of the Government that the indictment was conclusive of the existence of probable cause, as well of the jurisdiction, as of the guilt of the prisoner. This Court held, p. 85:

> "While the indictment is *prima facie* evidence, it is urged that there are substantial reasons why it should not be regarded as conclusive. . . . It is unnecessary to definitely determine this question. It is sufficient for this case to decide, as we do, that the

> indictment is *prima facie* evidence of the existence of probable cause."

And in the later case of *Hyde vs. Shine* (199 U. S., p. 84), this Court decided:

> "In this case, however, the production of the indictment made at least a *prima facie* case against the accused, and if the Commissioner received evidence on his behalf it was for him to say whether upon the whole testimony there was proof of probable cause."

So far as the decisions of this Court are concerned, therefore, it has on this point decided that upon the question of *jurisdiction,* as well as of innocence or guilt, the Commissioner or committing Magistrate in considering the probative effect of the indictment, is to consider it as *prima facie* establishing probable cause on both questions, and it necessarily follows that what is *prima facie* is subject to rebuttal.

There is no case that has ever come before this Court in which the indictment has been treated as conclusive, or in which greater force has been accorded to it in its probative effect, than of making it *prima facie.*

Considering the original purpose and intent of the Constitutional provisions and of the wording of the statute, it is evident that to give it greater effect than to make it merely *prima facie,* would be in effect to destroy the whole force of the constitutional provisions. The history of the constitutional clauses themselves will show this. The original constitutional provision contained in Section 2 of Article III of the Constitution was, "that the trial of all crimes except in cases of impeachment shall be by jury and such trial shall be held in the State where the said crimes shall have been committed."

So fearful were the States forming the United States Constitution of the pressure of any provisions unjustly upon their citizens, that at the conventions of a number of them when they adopted the Constitution expressed their desire that a number of restrictive clauses should be added.

The result was that at the first meeting of the first Congress elected under the Constitution a resolution was passed declaring:

> "The Conventions of a number of the States having at the time of their adopting the Constitution, expressed a desire in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: . . . That the following articles be proposed to the legislatures of the several States as amendments to the Constitution of the United States," etc.
>
> *U. S. Stats. at Large,* Vol. 1, p. 97.

Under this resolution ten amendments were proposed and immediately ratified by the several States, of which the sixth is the one in question, where it was reiterated that in all criminal prosecutions the accused should be tried only by a jury of the State and district wherein the crime shall have been committed.

To say that an indictment in one district is to preclude him absolutely from questioning that district as the proper place for trial, would be to destroy the whole benefit of this Constitutional provision. Its intention was that a person should not be dragged from his home to a distant State for trial before an unknown jury, unless he has committed the crime there.

If the question of jurisdiction, however, is to be conclusively settled by the finding of a grand jury in that dis-

tant State, then the Constitutional provision is of no avail, for no matter what evidence he may be able to adduce to show error or mistake, he would none the less be dragged off for trial to this distant State and endure all the suffering and expense thereof, although it might appear upon trial that the Court in that District had no jurisdiction of the trial of the cause. The finding of a grand jury in that distant State should be of much less weight than the finding of a committing magistrate at the place of residence of the accused, where he can be heard by his witnesses. The object of the Constitutional provision is that the accused shall not be dragged off to a distant State for trial merely upon the propounding of an accusation by a grand-jury of which, and of whom, he has never heard. There is a wide difference as to the intent of the Constitutional provision upon the two questions involved. The question of jurisdiction is wholly independent of and prior to the question of guilt. Probable cause should exist of both before the man is subjected to trial, but probable cause of his guilt is very different from probable cause of the jurisdiction of the Court to try him. In the latter case he would be subjected to all the inconveniences and expense of a trial whether he be guilty or not, whereas in the prior case he would be simply subjected to trial under the charge made as to his innocence or guilt by a grand-jury in the district in which he should properly be tried.

A consideration of the Amendment; of the reasons inducing its passage and of the results intended to be effected, makes it patent that it was never intended that the *ex parte* finding of a grand-jury of a distant State, acting without the knowledge of the accused, should be conclusive against the party accused as to the jurisdiction and subject him to be dragged off to that State for trial.

When he is called before a magistrate to be committed for trial, he is faced by the witnesses making the charge—has an opportunity to cross-examine them and may even be heard by himself and witnesses so as to convince the magistrate there is not even probable cause for his commitment.

Before a foreign grand-jury it is entirely otherwise. He does not know who are the witnesses—he is not allowed to cross-examine—he may be even entirely ignorant that the grand-jury had an existence until the indictment as found is hurled at him.

It has never been held, however, by this Court, even upon the question of innocence or guilt, that the indictment had any greater effect than that of being *prima facie*.

From the beginning of the Government the universal holding of the United States Courts has been upon the question of innocence or guilt, that the indictment was only probative and *prima facie* and that the accused had the right to submit testimony in rebuttal of its effect as showing probable cause.

A fortiori as we have shown in the case of the question of jurisdiction, could its effect be no greater than merely *prima facie* and the party be entitled to rebut its effect by evidence to the contrary.

To put it concisely, the accused would be entitled on the jurisdictional question to show that the Court in which the indictment has been offered and found is not a Court having jurisdiction to try him of the offense whether he be guilty or innocent thereof.

It has been remarked by this Court in the case of *Beavers vs. Henkel* (194 *U. S.*, 82) that cases, such as an application for removal of a party accused from one district of the United States to another, are different from the ordinary

cases of extradition. Different even from the qualified extradition which arises when one State within the Union surrenders to another an alleged fugitive from its justice.

This Court said, in *Beavers vs. Henkel* (194 U. S., 85) that "it is sufficient for this case to decide, as we do, that the indictment is *prima facie* evidence of probable cause." The only evidence offered in that case by the "offender" was evidence tending to "expose what took place before the grand-jury" that found the indictment. This Court said that such evidence was not competent, and that a defendant could not in this way expose the Government's case and prepare the way for his defense. Consequently, the *only* "evidence" before the Court in that case was a copy of the indictment. It was with reference to this state of facts the Court said that the indictment was *prima facie* evidence of the existence of probable cause. Such was the langauge in which this Court saw fit to express the idea that when *nothing else appears* the indictment alone is sufficient authority for an order of removal. Strictly speaking, an indictment is not *evidence* in the legal sense. It is merely hearsay assertion as to the offender's guilt (2 Wigmore on Evidence, p. 1110); it is *secondary* evidence, which, to a certain extent is admissible on such examinations. (*U. S. vs. Green,* 100 Fed. Rep., 943.)

In *United States vs. Pope* (27 Federal Cases, No. 16069) Lowell, J., after stating that it had been doubted whether a copy of the indictment is evidence in removal cases, but that he had held in a certain case that it was, said:

> "This was a very convenient decision for the United States, and a sound one, but it *rests rather on long usage* than on any principle of law, because, generally speaking, an indictment is evidence of nothing

but its own existence, unless there is some statute giving it greater effect. It is but secondary evidence after all, or rather the statement of the result of evidence, and the better practice is to give primary evidence of criminality."

We did not contend below, nor do we now insist, that primary evidence of criminality or probable cause must be produced. The rule that a copy of the indictment, *nothing else appearing,* ought to be accepted as sufficient, is not only convenient for the Government, but does no injustice to the accused. In the absence of exculpatory evidence, a copy of the indictment may well be accepted as *equivalent* to an affidavit, as sufficient authority for removal—not because it is evidence in the legal or primary sense, but because such removal cases ought to be ranged with that class of cases wherein secondary or hearsay evidence is deemed good enough to be accepted. In that sense it is *prima facie* evidence of probable cause. It is *treated* as evidence, and as being sufficient under such circumstances. (49 F. R., 52.)

When it is said that there must be evidence of probable cause, what is meant is that the Court should be satisfied that there is evidence on which a jury *may* convict, (*United States vs. Fowkes* 49 F. R., 52); or at least proof furnishing good reasons to believe that the crime alleged has been committed by the accused. (*U. S. vs. Burr,* 25 Fed. Cas., No. 14692*a*.)

Appellants contend only for the right to present evidence which shows the absence of probable cause—to show a state of facts upon which *no jury in the Middle District of Tennessee* could convict. The indictment will not be "evidence," as against the evidence which appellants present. The indict-

ment is merely *treated* as evidence in removal cases, *when no evidence is offered* by the offender, showing the absence of probable cause.

The Attorney-General complains that the right of "offenders" to present evidence causes much embarrassment in the administration of the law. It is less, however, than officials charged with criminal prosecutions believe. True it is that guilty offenders who find nothing presented as evidence against them except a copy of an indictment, by vigorous swearing, might for the time go free; but in such cases the fault must be imputed to the prosecution. At comparatively little inconvenience to the Government, witnesses enough can be presented to prevent a discharge; for it is not necessary for the Government to prove guilt as upon a trial, but merely to prove enough, *taken by and within itself,* to show the existence of probable cause. True it is that the day of punishment might, in some cases, be delayed by the guilty, and that the rule upon which the Government insists makes the prosecution both of the guilty and of the innocent easier, more convenient to the Government, and more onerous and oppressive to the accused. But Judges remember, what prosecuting officers seem to forget, that in controversies between the Government and the individual he is entitled to reasonable protection; that there are risks to him and burdens which he ought not to have needlessly cast upon him; that the expense must necessarily be enormous, and in most cases beyond his ability to pay; and that in the matter of removals, the enforcement of the criminal law ought not to be oppressive. The question is presented to a District Judge and not to a plain Commissioner—a Judge as capable of determining the matter as is the Judge of the Court into which the indictment was returned. The fact that a rule adopted to protect

the innocent from peril and oppression, may possibly be taken advantage of by the guilty to delay punishment, is no reason for the abolition of the rule; we say *abolition,* because the rule now is as contended, and has been since Section 1014 of the Revised Statutes was enacted; and a *new* rule was applied against these appellants by the Court below.

We submit that they were erroneously denied their rights, and upon this ground alone are entitled to a reversal.

But it may be urged in behalf of the Government that the evidence offered for the appellants is "immaterial," and therefore that the case is one to be regarded as a case in which really no evidence was offered by them at all. The Circuit Judge held that inasmuch as the indictment charged that a conspiracy had been formed, and that an *overt act* had been committed in Tennessee, the *personal presence* of the appellants in Tennessee was not essential, and as a consequence the evidence offered was "immaterial."

In the minority opinion in *Hyde vs. Shine* (196 U. S., 62) it is said that if the defendants were not in the District of Columbia at the time the conspiracy for which they were indicted was formed, they could not be guilty of that crime.

The question in the present case is not whether a person in one State, can be guilty of the crime of conspiracy in another State without being personally present in the latter State where the conspiracy is formed. The question is not whether Mr. Kessler, being in Florida, could engage in or form a conspiracy in Tennessee, without being personally present in the latter State. The question is one altogether different. It is, whether, Mr. Kessler and fifty-six others having actually formed or engaged in a conspiracy (say) in the State of New York, the fact that some one of the fifty-six does some "act" in Tennessee to effect the object of the con-

spiracy, operates to make all of them guilty of committing the crime of conspiracy in the latter State, and to make them indictable for such crime *there*. Or, re-stated, the question is, not whether a man can engage in a conspiracy without being personally present, but whether when he has engaged in a conspiracy in one jurisdiction, the overt act of a co-conspirator in another jurisdiction has the effect to make the man commit the crime of conspiracy there also? Our position is that it does not, and under the Constitution of the United States cannot, have that effect.

II.

Persons proceeded against criminally for engaging in a conspiracy in violation of the Anti-Trust Act, must be indicted and tried in the district in which the crime was committed, that is, in the district in which they engaged in or formed the conspiracy. They cannot be indicted or tried for conspiracy in another district, upon the ground that jurisdiction can be taken of all, in any district in which any one of the conspirators commits an overt act in furtherance of the object of the conspiracy. No such jurisdiction exists.

The notion that defendants can be tried for the crime of conspiracy wherever an "overt act" has been done, appears to have originated in 1787 in the unpublished case of *King vs. Bowers*. In the opinion delivered in 1803 in *King vs. Brisac* (4 East Term. Rep., 171) Grose, J., said that in *King vs. Bowers* no proof of *actual* conspiracy in Middlesex, where the trial took place, was given, and that it appeared that the "individual actings" of *some* of the defendants were wholly in counties other than Middlesex. But that as the conspiracy

had been proved against *all* "from the community of criminal purpose", and by their *joint* co-operation in forwarding its object in different places and counties, it was to be held that they could be presented and tried in Middlesex, because overt acts had been done by *some* of them there. That is to say, it was held that when it is proven that a conspiracy has been entered into, any or all of the conspirators may be tried in *any* county in which *any* of them do overt acts in prosecution of the consipracy.

No reason is given. All that is said is, that the "locality" required for the purpose of trial, was "holden to be satisfied" by the state of facts. Indeed, the facts of that case are not given.

It was upon the authority of this case that *King vs. Brisac* was decided in 1803. (4 East Term. Rep., 164.) The *facts* of that case were that Brisac and Scott, officers of the English Navy, on the ship Iris, then at sea, drew *false* vouchers (for money paid for provisions for the ship) on the Commissioners of the Victualling, in Middlesex County, England, and caused them to be presented *there* through persons entirely innocent of the fraud; and through them, in this way, got money from the Government. They were indicted in Middlesex. Scott fled, but Brisac stood his trial.

It was held that he was triable there. Grose, J., who delivered the opinion, said, that the *delivery* of the false vouchers with fraudulent intent, "through innocent persons as instruments," is *an offense* in the place where the vouchers were delivered, is a matter which cannot be doubted, though the conspiracy may have been in another place.

What he says, and all he says, is that it cannot be doubted that such a thing as this, "is an *offense* in the place where the vouchers were delivered."

Undeniably that is true. It was an offense—the offense of obtaining money under false pretenses, and that offense was committed when and where the money was obtained. The defendant, however, was *indicted* for engaging in a conspiracy, and he committed that offense either at Brassa Sound or Lerwick—outside of the county where he was indicted. The fact that it could not be doubted that he had committed *an offense* by the delivery of the false vouchers, and getting money from the Government thereon, in Middlesex is, we submit, no sufficient reason for holding that Captain Brisac could be indicted and tried for the *conspiracy,* in the County of Middlesex. The juridiction was sustained, however, by this reasoning:

> "It is to be recollected that conspiracy is a matter of inference, deduced from certain criminal acts of the parties accused, done in pursuance of an apparent criminal purpose in common between them, and which hardly ever are confined to one place; and that from *analogy* there seems no reason why the crime of conspiracy, amounting only to a misdemeanor, may not be tried wherever one distinct overt act of conspiracy is in fact committed, as well as the crime of high treason in compassing and imagning the king's death, or in conspiring to levy war."

As will be observed it was held that because *"an offense"* was committed in Middlesex, the defendants might be tried in that county for committing the offense of conspiracy, elsewhere upon the high seas; and for the reason that inasmuch as one guilty of high treason could be tried where any treasonable act was committed, "no reason" appeared why the crime of consipracy might not be tried wherever one distinct overt act of consipracy *was* committed.

The Supreme Court of Pennsylvania states the reason somewhat differently in *Commonwealth vs. Gillespie* (7 S. & R., 469; 10 Amer. Dec., 475), decided in 1822. After stating that conspiracy is a matter of inference, deducible from the acts of the parties accused, done in pursuance of an apparent criminal purpose in common between them, and which is rarely confined to one place, the Court, instead of resorting to the treason-argument, by way of "analogy," said that—

> "If the parties are linked in one community of design and of intent, there can be *no good reason* why both may not be tried where an overt act is committed."

The Supreme Court of Texas took the same view, and quoted with approval the above extract from *Commonwealth vs. Gillespie,* in *Ex parte Rogers.* (38 Amer. Rep., 656.)

It thus appears that the early view was that conspiracy was a matter of *inference;* that inasmuch as there appeared to be "no good reason" why the conspirators should not be tried, either where the conspiracy was formed *or* where an overt act was done, and inasmuch as traitors could be tried wherever any act of treason was committed, it must be proper to try conspirators, guilty only of a misdeamanor, either where the conspiracy was committed, or where any overt act was done by any of them.

It is obvious that these reasons are inadequate. Conspiracy is *not* a matter of inference, but a fact—to be proven by evidence like any other fact. As with many other crimes, it is often to be proven by circumstances; and of course, guilt in such cases is an inference deduced from circumstantial evidence. Treason consists in something more than

mere intent. In these times *acts* are required, and as a consequence, the argument by analogy fails. To say that there is "no good reason" why a conspirator may *not* be tried in divers places, is hardly to state a good reason why he *should*, in view of the *Constitutional* provision *fixing* the venue. It certainly is not a sufficient argument to show that conspiracy should be an exception to the Constitutional provision which makes *one express* exception (impeachment) *and no more.*

The Supreme Court of New York had occasion to consider the question of conspiracy in 1830 in *People vs. Mather* (4 Wend., 229; 21 Am. Dec., 122) wherein the defendants were indicted for a conspiracy to abduct William Morgan, the man who it is alleged exposed Free Masonry. The Court said that conspirators could be proceeded against in any county where an overt act was committed, for the reason that "the law considers that where they act, there they *renew*, or perhaps, to speak more properly, they *continue* their agreement, and this agreement is renewed, or continued as to *all* wherever any *one* of them does an act in furtherance of their common design." Having said this, the Court then observed that unless this proposition is correct, "the decisions can be accounted for on no other principle." The Court appeared to labor under the impression that decisions *had* to be accounted for on some principle, failing to remember that judicial decisions sometimes can be accounted for on no logical principle at all.

In *Noyes vs. The State* (41 New Jersey Law, 418) it appeared that the defendant and others were indicted for engaging in a conspiracy to defraud the stockholders of a New Jersey Life Insurance Company. The scheme was to turn over the company and its assets to a New York corporation in such manner as that it was a fraud on the New Jersey

corporation and its stockholders. The conspiracy to do this was arranged in New York, and the president of the New Jersey corporation, Mr. Stillwell, there delivered a regular written assignment to the defendant, Noyes, authorizing him to take charge of the New Jersey concern.

The indictment was found in New Jersey. The point was made for the defendant that inasmuch as the conspiracy had been formed in New York, Noyes could not be indicted in New Jersey. But it further appeared that Noyes had gone to New Jersey with his assignment to take charge, and that in the latter State, Stillwell, the president of the New Jersey corporation, *through his subordinate agents,* co-operated with Noyes, *in New Jersey,* in turning over the office and assets. The Court held that these acts on the part of Noyes and Stillwell, who were jointly indicted, presented a different question, and that by such "joint act the conspiracy was renewed and *partly executed* in this State in the County of Essex, and that *thus* the agreement became cognizable by the courts of that locality." The Court said that if the fact that the conspiracy had been formed in New York, and that Noyes had been the only one of the conspirators who came into New Jersey and there performed an act in pursuance of the conspiracy, "it might be difficult to sustain, on specific grounds, the judicial jurisdiction of this State over the offense." And upon that point the Court added:

> "And accordingly this is the jurisdictional feature relied on by the State, the theory being that in whatever place one of the conspirators does an act in furtherance of the common design, the illegal agreement is thereby renewed as to all, and consequently, the locality of the crime is by the same means changed as to all. But no authority has been cited in support

of this proposition. At least no authority that is opposite. The cases referred to go no further than to hold that this legal intendment, that the act of one confederate is the act of all, will arise when such act is done within the *same jurisdiction* in which the conspiracy occurred. The principle is one relating to mere venue, and not to international jurisdiction."

The Court shows that *People vs. Mather* (4 Wend., 229 involved merely the question whether a conspiracy committed in the State should be tried in the county where the conspiracy was formed, or might be tried in some other county of *that* State, in which acts were done to perfect its object.

Chief Justice Beasley said that the inclination of his mind was against the extension of such power beyond the limits already clearly defined.

In the course of the opinion the Court further said that an indictment charging a conspiracy to commit several distinct crimes, charged only one crime: that the criminal act was an unit; and also remarked upon the necessity of not confounding the crime which is the conspiracy, with the crime which is the object of the conspiracy.

The decision from which this rule is deduced was made in the English Courts and it has been followed in the several States of the United States, in their application only to *counties,* viz.: that in the case of a conspiracy the trial could be had either in the *county* in which the conspiracy was entered into, or in any *county* in which an over act was committed. These decisions were made in their application only to counties unde one general national jurisdiction.

The acts alleged in this indictment to be overt acts are merely colorless, indifferent acts done by the defendants

respectively charged with doing them in the conduct of their own business. They are not acts which in themselves tend in the least to sustain or show the evil design, or tend to its accomplishment.

The averment of each of these alleged overt acts in the first count of the indictment is:

> "In pursuance of the said unlawful conspiracy and to effect the object of the same, and as an act on his (or its) part of engaging in the same."

The defendant particularly named, in the Middle District of Tennessee, did the act averred. (Rec. No. 369, pp. 21-34.) It in substance is so averred in the second count, and perhaps in the third count, and in the fourth count. (*Ib.*, p. 37; pp. 40-44.) But in none of the counts are any of these acts charged to have been done as an act of engaging in a conspiracy on the part of any other defendant than the one charged with doing the act. These alleged acts are as follows:

1. That the Virginia-Carolina Chemical Company, by Watkins, its agent, on July 23, 1903, at Decherd, in the Middle District of Tennessee, did unlawfully and knowingly offer and agree to furnish and deliver to one Haynes at Decherd, aforesaid, sixty-five tons of fertilizer merchandise. (Rec. No. 369, p. 21.)

2. That said Chemical Company delivered to Haynes at Decherd aforesaid, on September 20, 1903, fifteen tons of such merchandise. (*Ib.*, p. 21.)

3. That said Chemical Company on July 23, 1904, offered to furnish to said Haynes seventy-five tons of such merchandise. (*Id.*, p. 21.)

4. That said Chemical Company on September 26, 1904,

caused to be delivered to said Haynes at Decherd aforesaid fifteen tons of said merchandise. (*Id.*, p. 22.)

5. That said Armour & Company on March 10, 1905, at Nashville, in said Middle District of Tennessee, by one Leslie, its agent, unlawfuly and knowingly did deposit in the postoffice there, addressed and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, Mississippi, a certain notice of shipment, partly written and partly printed, in the words and figures following:

> "The Armour Fertilizer Works, owned and operated by Armour & Company, Prudential Building, Atlanta, Ga. Duplicate to be mailed with bill of lading to customer. No. 612. March 10, 1905.
>
> "We have this day shipped from Nashville, Tenn., storage to Bramlitt Hdw. Co., Corinth, Miss. Charge to S. D. Bramlitt. Address same. No. bags, 400; weight of bags, 100; brand, King Cotton 8.2.2; tons, 20. Order No. 4613. Bill of lading herewith. Invoice will be mailed from Chicago. Above quantities shipped 3-10, 1905. Freight terms . . . Car No. 13619. Via L. & N. Charges prepaid, $48.00.
>
> "The Armour Fertilizer Works,
> *Per Alex. Leslie.*"

(*Id.*, p. 22.)

6. That said Armour & Company on March 10, 1905, at West Nashville in said Middle District of Tennessee, unlawfuly did knowingly deliver to the Louisville & Nashville Railroad Company, for shipment by rail to Corinth in the State of Mississippi, consigned to said Bramlitt Hardware Company at that place, twenty tons of the fertilizer merchadise aforesaid. (*Id.*, p. 22.)

7. That the said Armour & Company, on September 14, 1904, at said West Nashville, unlawfully did knowingly

deliver to the Nashville, Chattanooga & St. Louis Railway fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one Duncan, at Jonesboro, in the State of Tennessee. (*Id.*, p. 23.)

8. That said Federal Chemical Company, on December 28, 1903, at West Nashville aforesaid, unlawfully did knowingly deliver to the Louisville & Nashville Railroad Company, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one Walker, at Athens, Alabama. (*Id.*, pp. 25-26.)

9. That said Federal Chemical Company, on February 2, 1904, at West Nashville aforesaid, unlawfuly did knowingly deliver to the Nashville, Chattanoga & St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers & McGavock, at Athens, Alabama. (*Id.*, p. 26.)

10. That said Furman Farm Improvement Company, on January 11, 1904, at Springfield, in said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise. (*Id.*, p. 26.)

11. That said Furman Improvement Company, on April 4, 1904, at Chattanooga, Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga & St. Louis Railway, fifteen tons of said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams at Springfield aforesaid. (*Id.*, p. 26.)

12. That the said Furman Farm Improvement Company, on April 6, 1904, at Springfield aforesaid, unlawfully did knowingly cause to be delivered to said firm of Fiser. Orndorff

& Williams, fifteen tons of said fertilizer merchandise. (*Id.*, p. 26.)

13. That said Marietta Fertilizer Company on July 21, 1904, at and within the town of Jonesboro, in the State of Tennessee, by one Reeves, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one Boyd, at Jonesboro aforesaid, seventy-five tons of the fertilizer merchandise aforesaid. (*Id.*, p. 28.)

14. That said James G. Tinsley, on December 3, 1903, at Nashville, in said Middle District of Tennessee, as Vice President of said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, "James G. Tinsley, V. P.," to a certain check drawn by said Tennessee Chemical Company upon the Bank of America, New York, for $6,792, to the order of said Tinsley; he, the said Tinsley, then and there well knowing the contents of the same and that his said act was done in pursuance and to effect the object of said unlawful conspiracy, and was an act on his part of engaging in the same. (*Id.*, p. 28.)

15. That said National Fertilizer Company, on March 2, 1905, in said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville & Nashville Railroad Company, for shipment by rail to Cullman, Alabama, consigned to one Williams at that place, twenty tons of the fertilizer merchandise aforesaid. (*Id.*, pp. 28-29.)

16. That said Rhea, on October 6, 1903, at Nashville aforesaid, unlawfully did direct and require one Connell, Treasurer of said National Fertilizer Company, to sign his the said Connell's name as treasurer to a certain check drawn by said National Fertilizer Company upon the American National Bank of Nashville for $480, to the order of one F. Burbidge, he, said Rhea, then and there well knowing

the nature and contents of the said check, and that his said direction and requirement were in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and that it was an act on his part of engaging in the same. (*Id.*, p. 29.)

17. That said Rhea, on January 23, 1905, at and within the County of Davidson, in said Middle District of Tennessee, unlawfully did sign his name, "Wm. D. Rhea," after the word "approved" and before the word "Manager," upon the face of a certain printed document, whereby said National Fertilizer Company offered to sell and deliver to one Boyd, at Jonesboro, Tennessee, fifty tons of the fertilizer merchandise aforesaid; he the said Rhea then and there well knowing, etc., (as before.) (*Id.*, p. 29.)

18.—That said Abram C. Read, on November 19, 1903, at the County of Davidson, in said Middle District of Tennessee, unlawfully did knowingly sign his name, "A. C. Read," after the word "approved" and above the word "Manager," upon the face of a certain document, whereby said Read Phosphate Company offered to furnish and deliver at Hartselle, Alabama, to one Stewart, forty to sixty tons of the fertilizer merchandise aforesaid; he said Read then and there well knowing, etc., (as before). (*Id.*, pp. 30-31.)

19. That said Read, on the sixth day of December, 1904, at said County of Davidson, in said Middle District of Tennessee, unlawfully did sign his name, "A. C. Read," after the words, "Approved, Nashville, Tenn., Dec. 6, 1904," and above the word "Manager," upon the face of a certain other printed document, whereby said Read Phosphate Company and he the said Read as manager thereof, offered to sell to said Stewart and to deliver to him at Hartselle, Alabama, forty to fifty tons of the fertilizer merchandise aforesaid;

he, said Read, then and there well knowing, etc., (as before). (*Id.*, p. 31.)

20. That said Swift & Company, on August 1, 1904, at and within the town of Jonesboro, in the State of Tennessee, by its agent, Elliott, unlawfully did knowingly offer to furnish to one Diehl thirty tons of such fertilizer merchandise. (*Id.*, p. 33.)

21. That said Tennessee Chemical Company on March 16, 1905, at West Nashville, in said Middle District, unlawfully did knowingly deliver to the Louisville & Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, Alabama. (*Id.*, p. 33.)

22. That said T. Garland Tinsley, on May 17, 1905, at Nashville, in said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to Haynes & Brother, at Oxford, Alabama, a certain letter of the tenor following, to-wit:

"T. G. Tinsley, President and Treasurer.
"Allen Hardison, Secretary.
"TENNESSEE CHEMICAL COMPANY, MANUFACTURERS AND IMPORTERS OF OX FERTILIZERS.
"NASHVILLE, TENN., May 17, 1905.

"*Messrs. D. P. Haynes & Bro., Oxford, Ala.*

"Dear Sirs: I am in receipt of your favor of the 16th and beg to state we could not allow any discount further than the 5 per cent. for cash settlement. We will be glad to have you settle in cash on this basis if you desire to do so, but we are sorry to state that we are not in a position to offer you any further discount. Yours truly,

T. G. TINSLEY, *President;*"

he the said T. Garland Tinsley then and there well knowing, etc., (as before). (*Id.*, pp. 33-34.)

23. That the said T. Garland Tinsley, on June 25, 1904, at said West Nashville, as attorney of the said James G. Tinsley unlawfully did write an indorsement, to-wit.: "Pay to order Colonial Development Company, James G. Tinsley. By T. G. Tinsley, Atty.," on the back of a certain check drawn by said Tennessee Chemical Company upon the Mercantile National Bank of New York, for $1,625.08, to the order of James G. Tinsley; he said T. Garland Tinsley well knowing, etc., (as before). (*Id.*, p. 34.)

It will be first observed of each of these alleged acts:

That none of them are averred to be acts of selling or buying or to have been done in the course of in connection with any selling or buying of merchandise in inter-state commerce. If acts of selling and buying, they are not averred to have been at fixed, uniform or non-competitive prices, or to have been non-competitive, which is the gist of the alleged offense. Many of them, *e. g.*, acts numbered *supra* 1, 2, 3, 4, 7, 10, 12, 13, 17, and 20, if acts of trade and commerce, were, as averred, acts of *intra-state* and not *inter-state* trade and commerce. Acts 14, 16, 18, and 19 are not averred and do not appear to be acts in or in connection with inter-state commerce. The rest of said alleged acts, viz.: acts 5, 6, 7, 8, 9, 11, 15, and 21 (being acts of delivery of merchandise to a common carrier, consigned and to be shipped to a consignee in the same or another State), if they appear to be acts of inter-state trade and commerce at all, are only so as to transportation, as to which there is no charge in the indictment, when properly construed, of a conspiracy in restraint of trade.

It will be further observed of each of the alleged acts averred to have taken place in the Middle District of Tennessee to effect the object of the conspiracy, (and this is of controlling importance,) that the acts are in themselves, as they are there averred, innocent and indifferent acts, which afford no evidence whatever tending to show either the engaging in any conspiracy or the purpose of carrying out its corrupt object.

The theory on which the Government bases its contention that the act of one individual conspirator in the Middle District of Tennessee can be held to establish the fact that all the alleged co-conspirators engaged in the conspiracy charged, in the Middle District of Tennessee, must be that of the application of the principle on which the acts of one conspirator are received in evidence against his co-conspirators. That theory is that each conspirator, by the act of his co-conspirators in engaging in the conspiracy is made the agent of each co-conspirator to promote and further the corrupt or unlawful design of the conspiracy. It is an application of the principle, *qui facit per alium facit per se.* The principle on which this doctrine is based is thus laid down by Greenleaf in his work on Evidence:

> "The principle on which *the acts and declarations of other conspirators,* and acts done at different times, are admitted in evidence against the persons prosecuted, is, that by the act of conspiring together, the conspirators have jointly assumed to themselves, as a body, the attribute of individuality, so far as regards the prosecution of the common design; thus rendering whatever is done or said by one, in furtherance of that design, a part of the *res gestae,* and therefore the act of all. It is the same principle of identity with each other, that governs in regard to the acts and admissions of agents, when offered in evidence

against their principals, and of partners, as against the partnership, which has already been considered. And here, also, as in those cases, the evidence of what was said and done by the other conspirators must be limited to their acts and declarations made and done while the conspiracy was pending, and in furtherance of the design; what was said or done by them before or afterwards not being within the principle of admissibility."

3 Greenl. Evi., Sec. 94.

See, also:

New York Guaranty Co. vs. Nelson, 78 N. Y., 503, 514.

In Carson on Criminal Conspiracies (11 Text Book Series, 1887), 213, in speaking of the admission of acts and declarations of co-conspirators, it is said:

"It is the principle of *agency,* which, when once established, binds the conspirators together and makes them mutually responsible for the acts and declarations of each."

And again:

"The acts and declarations of a conspirator to be admissible in evidence to charge his fellows must have been concomitant with the principal act, and so connected with it as to constitute a part of the *res gestae.*"

Id., 217.

The overt act done, then, must be such an act as is within the scope and purpose of the agency; that is, to effect or accomplish, *by concerted action,* the criminal or unlawful purpose of the conspiracy, or the purpose by criminal or unlawful means, as the conspiracy is defined by this Court in *Pettibone vs. United States,* 148 U. S., 197, 203.

It is plain, however, that while no act, not so admissible in evidence as being within the scope and purpose of the agency, could be taken to be an overt act as against other parties to a conspiracy, not every fact or act that would be so admissible in evidence would amount to the distinct overt, unlawful act, which, under the ruling of the common law cases cited against us, would be held to establish the crime of conspiracy within the jurisdiction where such overt act was committed. That will appear from our later consideration of those cases. But it will be here observed that none of those alleged acts which are averred in the indictment to have been done in the Middle District of Tennessee, would, as they are averred, be even admissible in evidence as acts from which (with others) a conspiracy might be inferred as against other persons than the one doing the act. (Archb. Cr. Pr. & Pl., 8th Ed. by Pomeroy, p. 1845, *p. 621.)

Obviously an act done by a single defendant, in the conduct of his own legitimate business and without any concert with the other defendants, of such a nature as he would do in the proper conduct of such business, cannot be relied upon by the Government as the act of all the defendants of engaging in an unlawful conspiracy. *The authorities cited refute the Government's contention.*

In *Hyde vs. Shine* (199 U. S., p. 76) it is said in the majority opinion, that it was there "unnecessary to consider whether an indictment will lie within the jurisdiction where the overt act is committed, though there are many authorities to that effect. (*King vs. Brisac,* 4 East Rep., 164; *People vs. Mather,* 4 Wend. (N. Y.), 229; *Commonwealth vs. Gillespie,* 7 S. & R., 469; *Commonwealth vs. Corlies,* 5 Brewst. (Pa.), 575.) We have ourselves decided that, if the conspiracy be entered into within the jurisdiction of the trial

Court, the indictment will lie there, though the overt act is shown to have been committed in another jurisdiction, or even in a foreign country. (*Dealy vs. United States,* 152 U. S., 539; *In re Palliser,* 136 U. S., 257.")

We maintain that the ruling in the English and the State cases above referred to cannot apply here to take away or diminish the right of the citizen which is guaranteed by the Federal Constitution, to be indicted and tried in the State and district where the alleged offense was committed.

It is not here a *mere* question of venue, but of Constitutional right which cannot be taken away or impaired by a mere constructive commission of a crime. As the so-called overt act is no part of the crime of conspiracy, obviously it cannot of itself be or amount to the commission of the offense of engaging in the conspiracy in the State or district where the overt act is committed. As the overt act is no part of the conspiracy, and as a conspiracy entered into in one jurisdiction is indictable there although the overt act is committed in another, such a case is not one within Section 731 of the Revised Statutes. If the common law rule of decision in the cases above cited were as extended as counsel for the Government maintain, it would require very clear and positive authority to establish the rule that in view of the provisions of the Federal Constitution, one can be indicted for conspiracy in violation of the Sherman Act in any district where one of the alleged conspirators sees fit to do any proper act in the further conduct of his own legitimate business.

But if the common law rule of venue announced in those cases on which the Government relies, were held applicable, in our Federal Courts, to cases involving Clause three of Section two of Article three of the Constitution and the

Sixth Amendment, *an examination of those authorities will demonstrate that they do not at all sustain, but refute, the Government's contention here.*

The King vs. Brisac, 4 East, 164, at p. 171;
People vs. Mather, 4 Wendell, 259-260;
Archbold Crim. Prac. & Pldg., 1056;
Commonwealth vs. Bartilson, 85 Pa. St., pp. 488, 489;
Commonwealth vs. Gillespie, 7 S. & R., p. 478;
Bouvier's Law Dict. Tit. Overt.

It will be borne in mind in considering this question, that we are not here concerned as to the sufficiency of the act which is required by Section 5440 of the Revised Statutes merely as a condition of prosecution; but with quite a different question, viz., as to the nature of the "distinct overt act" which can be relied on as constituting or establishing the commission of the offense of conspiracy in the jurisdiction where such overt act was done.

The common law ruling in the above cases and which counsel for the Government here invokes, has this well settled limitation: *That the "distinct overt act," which may be relied on as making conspirators liable to indictment where such act is committed, must be such a distinct act as in itself proves or at least tends to prove the crime. It must manifest the criminal purpose. It must be one of those acts* (*i. e.,* an act of that nature) *from which the criminal conspiracy may be inferred.* (*Same authorities.*)

In the case in which the doctrine was first announced that the crime of conspiracy may be tried "wherever one distinct overt act of conspiracy is in fact committed", and which is the authority on which later cases are based,—the Court in so ruling, adopted the rule from analogy to that laid down in

England in cases of treason; and applied the same rule to the case of *criminal acts* of conspirators. (*King vs. Brisac*, 4 East, 171.)

So in *People vs. Mather* (4 Wendell, 259-60) the Court in following the *Brisac Case* and ruling that the law considers that wherever the conspirators act they continue or renew their agreement, and that it is renewed or continued as to all whenever one of them commits an act in furtherance of their common design, further said:

> "In this respect, conspiracy resembles treason in England, when directed against the life of the king. The crime consists in imagining the death of the king. In contemplation of law, the crime is committed wherever the traitor is, and furnishes proof of his wicked intention by the exhibition of any overt act."

Now, an overt act, in treason, "is one which manifests the intention of the traitor to commit treason." (Bouvier L. Dic., title *Overt;* citing Archb. Cr. Pl., 379; 4 Blackst. Com., 79.) Or, as said in *People vs. Mather, supra,* it is one which "furnishes proof of his wicked intention."

In Bouvier's Law Dictionary, tit. OVERT, it is said:

> "An overt act in treason is proof of the intention of the traitor, because it opens his designs; without an overt act, treason cannot be committed. (2 Chitty Cr. Law, 40.) An overt act, then, is one which manifests the intention of the traitor to commit treason."

So the overt acts in conspiracy from which the crime of conspiracy may by inference be deduced are, as stated in *King vs. Brisac, supra,* "criminal acts of the parties accused, done in pursuance of an *apparent criminal* purpose in common between them." The required act is there called a "dis-

tinct overt act of conspiracy." And so in *Com. vs. Gillespie* (75 S. & R., 478).

In Archbold's Criminal Practice and Pleading (8th Ed. by Pomeroy, Vol. 2, pp. 1843-4, star p. 620) it is said:

> "Every overt act, to be evidence, must have at least a tendency to prove either the general nature of the conspiracy, or that one or more of the defendants were operating towards effecting that which is charged in the indictment as being the object of the conspiracy."

In *Commonwealth vs. Bartilson* (85 Pa. St., 488, 489) a case cited and relied on by counsel for the Government in the Court below to sustain the doctrine that any conspiracy or venue "may be laid in any county in which an overt act has been done by any one of the conspirators," the Court based this doctrine:

> "Upon the principle that the overt act is evidence of a conspiracy existing at the time and place where the overt act was committed. Of course, the overt act must be such as to tend to show that it was the result of a conspiracy. As is said in Arch. C. P. & P., 1056, 'Every overt act, to be evidence, must have at least a tendency to prove either the general nature of the conspiracy, or that one or more of the defendants were operating towards effecting that which is charged in the indictment as being the object of the conspiracy.'"
>
> 85 Pa. St., p. 489.

And so in each of the cases cited by counsel to sustain the position that a conspiracy may be tried in the jurisdiction where an overt act is done, the overt act was, in and of itself, convincing proof of the crime. It was a distinct criminal

act, in the accomplishment of the corrupt purpose of the conspiracy.

In *King vs. Brisac* (4 East, 164), as already stated, officers of an English ship engaged in a conspiracy upon the high seas to fabricate false vouchers to cheat the Crown and to obtain the money thereon. The acts proved to be done in Middlesex, where the indictment was returned and the trial had, were the delivery of the false vouchers to the Government officers by third and innocent persons through whom the defendants transmitted the same, and the application to the Government for and the receipt of payment by a letter or bill of exchange drawn by the conspirators to pay such fraudulent vouchers. It was contended on behalf of one of the conspirators that the gist of the offense having been committed upon the high seas, was triable under the admiralty commission directed by certain statutes. This contention was resisted by counsel for the Crown, "because a conspiracy was an offense not merely resting in the mind, but shown by overt acts done to carry it into execution; and here the information stated, that in further pursuance of the conspiracy the defendants caused the false vouchers to be sent to the Commissioners for victualling the navy, and did deliver the same to them, etc., and did utter and publish the same as true; all of which were proved to have happened in the county of Middlesex;" and that "the letter conveying the bill of exchange, which had been put into the post at Lerwick by one of the conspirators to be delivered in Middlesex, and which was accordingly there delivered, was an act done there in furtherance of the conspiracy, for which both the conspirators were answerable as much as if it had been delivered there by their own hands; and so the act of receiving the money upon

it afterwards at Somerset House by the holder is also imputable to those by whose procurance it was thus done."

In holding that the crime of conspiracy may be tried wherever one distinct act of conspiracy is in fact committed, the Court, as above stated, bases it upon the ground that "conspiracy is a matter of inference, deduced from certain criminal acts of the parties accused, done in pursuance of an apparent criminal purpose in common between them, and which hardly ever are confined to one place."

The Court also held, in the *Brisac Case,* that the alleged overt act was itself the criminal act for which the conspiracy was formed, and that the judgment of conviction was sustainable under a count of the indictment charging that substantive crime.

In *Commonwealth vs. Gillespie* (7 Serg. & R., 469) the overt act in question was the commission of the very criminal act for which the conspiracy was formed. The ruling there in effect was, that "he who procures another to commit a misdemeanor is guilty of the fact, in whatever place it is committed by the procuree." The Court said:

> "It makes no difference where Gillespie resided, if he conspired to sell New York lottery tickets in Pennsylvania, with his agent, and the agent effected the act, the object of the unlawful conspiracy, he is answerable criminally to our laws. In this offense there is no accessary. It must be recollected the conspiracy is a matter of inference, deducible from the acts of the parties accused, done in pursuance of an apparent criminal purpose, in common between them, and which rarely are confined to one place; and if the parties are linked in one community of design, and of interest, there can be no good reason why both may not be tried, where one distinct overt act is committed.

For he who procures another to commit a misdemeanor, is guilty of the fact, in whatever place it is committed by the procuree."

7 Serg. & R., 478.

In *People vs. Arnold* (46 Mich., 268) the ruling was that the verdict of conviction should be set aside for insufficiency of the information, and the information quashed; and, as the Court there said, it was not very essential that anything should be said at that time upon other questions. But it was laid down that according to the common-law precedents, the conspiracy might be tried wherever an overt act in pursuance of the conspiracy takes place. But the overt act there was *the commission of the very crime for the accomplishment of which the conspiracy was formed.*

In *People vs. Mather* (4 Wend., 229) the indictment on which the defendant was tried in the county of Orleans charged defendant with conspiring with others to assault Morgan and falsely imprison him, and to carry him off and secrete him in places to the jurors unknown; and, as overt acts, charged that defendant and the other persons in said county of Orleans did assault Morgan and against his will imprison him, and unlawfully and against his will did carry him off to places unknown to the jurors.

The question was whether defendant Mather was liable to conviction as a conspirator under this indictment, upon proof of his assistance in carrying the conspiracy into execution after it was formed, although the jury should not be satisfied that he was a party to the conspiracy at its inception.

The trial Court instructed the jury that the evidence established the fact that *however guilty Mather might be in aiding the execution of the conspiracy,* he was not a party to

it originally; and that although the jury should be satisfied that Mather *assisted in carrying the conspiracy into execution* after its formation, that fact, in the opinion of the Court, would not constitute him a party. The Court held, upon a motion for a new trial by the prosecution, that this ruling was erroneous, and that whenever a new party concurs in the plans originally formed by the conspirators and comes in to aid in the execution of them, he is from that moment a fellow conspirator; and that he commits the offense whenever he appears to become a party to the transaction, or does any act in furtherance of the original design. But the Court refused to grant the motion for a new trial on account of this misdirection or error of the trial Court. It was in connection with the discussion of this error that the Court said (p. 259):

> "In indictments for conspiracy the venue may be laid in any county in which it can be proved that an *overt act* was done by any one of the conspirators in furtherance of their common design."
>
> Archb. Crim. P., 6.

And after citing *Rex vs. Brisac,* the Court further said:

> "If conspirators enter into the illegal agreement in one county, the crime is perpetrated there, and they may be immediately prosecuted; but the proceedings against them must be in that county. If they go into another county to execute their plans of mischief, and there commit an overt act, they may be punished in the latter county without any evidence of an express renewal of their agreement. The law considers that wherever they act, there they renew, or perhaps, to speak more properly, they continue their agreement, and this agreement is renewed or continued as to all whenever any one of them does an act in furtherance

> of their common design. In this respect, conspiracy resembles treason in England, when directed against the life of the king. The crime consists in imagining the death of the king. In contemplation of law, the crime is committed wherever the traitor is, and furnishes proof of his wicked intention by the exhibition of the overt act."

It will be difficult to discover any evidence of "wicked intention" in any of the different acts averred in this indictment to have taken place in the Middle District of Tennessee.

The question is an open one in this Court. In *Hyde vs. Shine* (199 U. S., 76) the Court said that in view of the averments of the indictment it was not necessary "to consider whether an indictment will lie within the jurisdiction where the overt act was committed, though there are many authorities to that effect."

No indictment lies for conspiracy in any district other than that in which the conspiracy was engaged in, or committed; it does not lie in another district in which same co-conspirator may have committed an act in furtherance of the object of the conspiracy.

Article 3, Section 2, of the Federal Constitution provides that *all* crimes, except *impeachments,* shall be tried in the State in which the crime shall have been committed, but when not committed within any State, the trial shall be at such place as the Congress may by law have directed.

The Sixth Amendment provides that in all criminal prosecutions the accused shall be tried in the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law.

As will be observed there is one exception—"impeachment;" and the *expression* of the exception excludes the idea that any other offense than impeachment should be excepted, by implication.

The language of the Constitution is so clear and plain that no decision was required for us to be able to understand that the *locality* in which an offense is charged to have been committed, *determines* the place in which, and the Court by which, the trial shall be had. However, there is a decision exactly to that effect. (*Beavers vs. Henkel,* 194 U. S., 83.) It follows that whenever it appears that a crime has been committed, the question of venue, or the place where it was committed, is the first one to be determined in order to bring the offenders to trial. In order to conviction for crime, the crime must be an accomplished fact, that is, it must be a completed thing under the provisions or definition of the criminal statute, and must have a local habitation as well as name. People cannot commit the crime of conspiracy unless they commit it *somewhere;* and under the Constitution, that "somewhere" is the only place, State or district, in which they can be brought to trial.

It matters not that conspiracies are usually formed in secret, or under cover of darkness, nor that a wicked purpose, or criminal intent (an intangible thing) is an important element in the crime, nor that these conditions make the proof of guilt difficult.

It matters not, because there *is* such a crime as conspiracy, and it must be committed *somewhere;* the conspirators must be proven to be guilty; and the proof must be made and they must be brought to trial in the State and district where that crime called conspiracy was committed, *and nowhere else.* This is a Constitutional right.

An indictment does not lie for conspiracy under Federal law in a district other than that in which that crime of conspiracy was committed, for that an "overt act" was committed in such other district, *unless* one of two things be true; (1) unless it be that the overt act is an element or ingredient in, or an essential part of the crime of conspiracy and essential to its complete commission; (2) or unless it be that the overt act renews or continues the conspiracy, and thereby makes a new one. Neither of these propositions is true. *The crime of conspiracy under Federal law is committed when and where the wicked agreement is made; and the overt act is not an ingredient or part of it.*

Undeniably it was permissible for Congress to define the crime of conspiracy. Congress *could* have said that a conspiracy is a combination of two or more persons to do an illegal act, *or* to do an act lawful in itself by unlawful means. It could, if so minded, add to this definition still another element: It could say that a conspiracy shall be a combination of two or more persons to do an illegal act, or to do an act not illegal in itself by illegal means, *and some overt act done in pursuance thereof.* In one case the conspiracy would be complete without an overt act—complete in that the crime would be *committed,* when and wherever the combination was made.

In the other case, the crime would not be complete; it would not be committed, until an overt act had been done. In this latter case it would be possible for the criminal agreement to be made in one jurisdiction, and the overt act to be done in another. In such case the question of the place of trial, or venue, would become important. The case would then be one really in which the offense was committed in both jurisdictions, and, therefore, one in which the offenders

could be brought to trial in either. But this would be strictly in accordance with the requirement of the Constitution that the accused must be brought to trial in the district where the crime was committed.

The State of Tennessee has, by statute, made an "act" an essential element in the crime of conspiracy. In this respect, it has modified the definition of the crime as it existed at common law. The Code of Tennessee (§ 6695) provides that "no agreement shall be deemed a conspiracy unless some act be done to effect the object thereof," except conspiracies to commit arson, burglary, and a felony on the person of another. Congress could of course have done the same thing.

The question now under consideration is one of Federal law. The sole inquiry is, When is the crime of "conspiracy" under Federal law, committed? Is it "committed" when and where the wicked agreement is made, or, is it inchoate and incomplete, and therefore not committed (as in Tennessee) until some *act* has been done to effect the object of the agreement? If the crime of conspiracy be completed so soon as the combination is made, the place where it was made must determine the venue, or place of trial, regardless of the place where some overt act may be committed, or whether there ever be any overt act at all.

Upon the other hand, if under the Federal Statutes, an "act" done to effect the object of the conspiracy is an essential part of the crime itself—made an ingredient, or element thereof by the statute, it must follow that such crime is committed where the agreement was made *and* where the act was done which completed it; and if they were done in different jurisdictions, the crime was committed in both, and therefore is indictable in either, under Section 731 of the Revised Statutes of the United States.

Investigation discloses that the crime of conspiracy, under the laws of the United States, is committed whenever and wherever the combination is made; and that an act, or as it is called, an "overt act," to effectuate the object of the agreement, is *not* an element in, or part of, the offense at all.

No overt act was necessary to constitute the offense of conspiracy at common law. (8 Cyc., 624, 669, 684.)

In Daniel O'Connell's case, Lord Campbell, speaking for the House of Lords, said:

> "A conspiracy to effect an unlawful purpose, or to effect a lawful purpose by unlawful means is by the common law of England an indictable offense; and it is fit that, if several persons deliberately plot mischief to an individual, or to the State, they should be liable to punishment, *although they may have done no act in execution of their scheme.* When they have actually done what they intended to do, it may be more proper to prosecute them for their illegal acts; but in point of law, they remain liable for the offense of entering into the conspiracy."
>
> *O'Connell vs. Rex.,* 11 Clark & Finn., 403.

And this Court has said that—

> "The offense (*of conspiracy*) does not consist of both the conspiracy and the acts done to effect the object of the conspiracy, but of the conspiracy alone."
>
> *United States vs. Britton,* 108 U. S., 199, 204.

"At common law it was neither necessary to aver, nor to prove, an overt act in furtherance of a conspiracy." (*Bannon vs. United States,* 156 U. S., 468.

Both at common law and under the Federal Statutes, "the offense of conspiracy was complete whenever the unlawful concert or agreement was entered into and concluded, al-

though nothing was done pursuant thereto, or to carry it into effect."

Dealey vs. United States, 152 U. S., 539, 547;
United States vs. Walsh, 5 Dill., 447; S. C., Fed. Cases, No. 16,636.

It was said by Judge Dillon in *Walsh's case,* that

> "the offense of conspiracy at common law, being complete without an overt act, it is one of the few cases in which the law undertook to punish criminally an *unexecuted intent,* or purpose to commit crime."
> 28 Fed. Rep., 395.

This statement, however, is not accurate. The learned Judge failed to distinguish between the crime which the law punishes, and the ulterior crime which the conspirators committed the punishable crime, in order to accomplish. To illustrate: A and B desire to bring about C's death. They enter into a conspiracy to poison him. It will be observed that the main object or purpose is C's death—to commit a crime which the law calls murder; but that in order to effect it, they entertain another intent or purpose subordinate to the main purpose—the intent to form a combination in order to reach the murderous end in view. Pursuant to that subordinate intent they form the combination, that is, they enter into a conspiracy. Now, if we assume that at this juncture they are discovered, so that the affair proceeds no further, and no overt act has been done to effect the object of the conspiracy, both at common law and under the Federal Statutes, the *offense* of conspiracy is nevertheless complete. It is true they did not succeed in executing the object of the conspiracy, but it is equally true that they did succeed in forming the combination; that they did commit conspiracy.

The law does not assume to punish them for the intent to murder C, for if it did, the case would be one, as Judge Dillon remarks, in which the law undertakes to punish criminally for an unexecuted intent to commit crime. The law does not assume to punish that *intent*. It does not assume to punish any mere intent at all. It assumes to punish an act—the *act of conspiring* for the purpose of effectuating that wicked intent; and this *act of conspiring is* a substantive offense. It is a criminal *act* because of the criminal objective intent which breathed it into being. It is made a substantive offense because of the wicked or criminal nature of the object intended to be accomplished through the conspiracy. A few extracts from the decisions will make this plain.

Said the Supreme Court of Maryland:

> "There is nothing in the objection that to punish a conspiracy when the end is not accomplished, would be to punish a mere executed intention. It is not the bare intention that the law punishes, but the *act of conspiring* which is made a substantive offense by the nature of the object to be effected."
>
> 5 H. & J., 317; 9 Am. Dec., 534.

Said Benedict, J., in *United States vs. Donau* (25 Federal Cases No. 14,983):

> "The act to effect the object of the conspiracy which the statute calls for, is not designated an overt act, and was *not* intended to be made an element proper of the offense. The offense is the conspiracy. Some act by some one of the conspirators is required to show not the unlawful agreement but that the unlawful agreement while subsisting became *operative*. The offense of conspiracy is committed when to the intention to conspire is added the actual agreement; and

> this *intent* to conspire *coupled* with the *act of conspiring,* completes the offense intended to be created by the statute, notwithstanding the requirement that the prosecution must show by some act of some one of the conspirators that the agreement went into actual operation."

It will now be perceived that a substantive crime called conspiracy, is complete, that is, it is *committed,* when, to the intention to combine for the purpose of effecting an illegal object, there is added the actual agreement; the act of conspiring to accomplish it. These two, namely, the *intention* to combine for the criminal purpose, and the *act of conspiring* to accomplish it, are the elements, and the only elements, to be found in the crime of conspiracy, either at common law or under our Federal Statutes. Acts, commonly called "overt acts," done in pursuance of this conspiracy, or to effectuate it, are no part of the offense or crime itself.

The common law was entirely logical in declaring that the offense was a completed crime without an overt act.

Unless, then, the Federal Statute has given a new definition to "conspiracy;" unless it has made an "act" an element in, or substantial part of the crime itself, it follows that the crime is committed under that statute (as at common law) when and where the act of conspiring is committed; and, of course, this place must, under the Constitution, be the place of trial.

Our Federal Statute has made no such change. Section 5440 of the Revised Statutes provides that "if two or more persons conspire to commit an offense against the United States, and one or more of them do any act to effect the object of the conspiracy, all the parties are liable."

It must be admitted that there is confusion in the earlier

cases as to the meaning and effect of this statute. The judges at one time were inclined to hold that this section materially altered the common law, and made the act for which the statute calls, essential to a "complete offense;" (28 Fed. Cas., No. 16,636; 2 F. R., 757) that it made the act an ingredient of the crime, and an essential element of it.

United States vs. Thompson, 29 Fed. Rep., 86;
United States vs. Nunnemacher, 27 Fed. Cas., No. 15,902.

Indeed in *United States vs Hirsh* (100 U. S., 34) Mr. Justice Miller remarked that under Section 5440, some act is necessary "to complete" the offense. Subsequently the question was considered, and settled otherwise.

In *United States vs. Donau* (25 Fed. Cases No. 14,983) Benedict, J., said:

> "The offense of conspiracy is committed when to the intention to conspire is added the actual agreement; and this intent to conspire, coupled with the act of conspiring, completes the offense intended to be created by the statute, notwithstanding the requirement that the prosecution must show by some act of some one of the conspirators that the agreement went into actual operation. The requirement that some act to effect the object of the conspiracy be done by some one of the conspirators is intended to *afford* a *locus penitentiae.* Until some act be done by some one of the conspirators to effect the object of the unlawful agreement all parties to the agreement may withdraw and thus escape the effect of the statute."

In *United States vs. Britton* (108 U. S., 204) the Supreme Court said:

> "The offense charged in the counts of this indictment does not consist of both the conspiracy and the

acts done to effect the object of the conspiracy, but of the conspiracy alone.

"The provision of the statute that there must be an act done to effect the object of the conspiracy merely affords a *locus penitentiae,* so that before the act done either one of the parties may *abandon* their design and thus *avoid the penalty* prescribed by the statute."

In *Dealey vs. United States* (152 U. S., 539) the conspiracy had been committed in North Dakota, and the act to effectuate it, done in Canada. It was urged for the defendant that the indictment was defective in that it did -not charge that the overt act was done within the limits of the United States. The objection, however, was overruled. The Court in denying validity to it, quoted with approval the language of Mr. Justice Woods in *United States vs. Britton,* above set forth, and then added:

> "Hence, if the conspiracy was entered into within the limits of the United States *and the jurisdiction of the Court,* the crime was then *complete,* and the subsequent overt act in pursuance thereof, may have been done *anywhere.*"

In *Bannon vs. The United States* (156 U. S., 464, 469) the Court again quoted and approved the language of Mr. Justice Woods in *Britton's case* set out above, when he said that the provision in the statute as to an *act,* "merely affords a *locus penitentiae,* so that before the act done, either of the parties may abandon their design and thus *avoid the penalty* prescribed by the statute."

That language was repeated and again approved in *Hyde vs. Shine* (199 U. S., 76).

The agreement or combination is the offense, but under Section 5440 R. S. the doing of some act to effectuate it is

necessary to make it *indictable.* (*United States vs. Sacia,* 2 Fed. Rep., 757.)

It will now be perceived that a substantive crime called "conspiracy," is complete, that is, it is *committed,* when, to the intention to combine for the purpose of effecting an illegal object, there is added the actual agreement; the act of conspiring to accomplish it. These two, namely, the *intention* to combine for the criminal purpose, and the *act of conspiring* to accomplish it, are the elements, and the *only* elements, to be found in the crime of conspiracy, either at common law or under our Federal Statutes. Acts, commonly called overt acts, done in pursuance of this conspiracy, or to effectuate it, are no part of the offense or crime itself.

As will be observed, the "act" of the general conspiracy statute (§ 5440 R. S.) being no part of the crime, may be done *anywhere,* either in the United States or out of them. (*Dealy vs. United States,* 152 U. S., 539; *Hyde vs. Shine,* 199 U. S., 476); and the Sherman Act is not directed against *acts* in restraint of trade at all. It is leveled alone at *agreements.*

We therefore submit that this proposition has now been established, namely: An "act", commonly called an "overt act" is no part of, or ingredient in, the offense or crime called conspiracy under Federal law (or common law either, for that matter), and that crime is a complete one in itself, apart from all overt acts.

Inasmuch then as the "act" of the statute commonly called an overt act, is no part of, or element in, the crime of conspiracy, the place where such *act* may have been done cannot determine the question of jurisdiction; for the only Court that has jurisdiction, is the Court of the district in which the *conspiracy* was committed. It is the right of the accused

to have the trial there. Indeed, the trial cannot be had elsewhere, since the matter is not a statutory, but a Constitutional right. As already stated, the only ground upon which it has ever been contended that all the conspirators can be tried in any district in which any one of them may chance to commit an overt act, is that such act "renews" the conspiracy—that is, has the effect to make all the parties commit a new conspiracy in the jurisdiction where such *act* was done.

III.

An overt act is not a renewal or continuance of the conspiracy which it was done to further. An overt act committed by one conspirator, gives no jurisdiction over the others, or himself either, for the crime of conspiracy. The conspirators can be indicted only in the district in which the crime itself was committed.

The notion that a crime committed (that is completed) can be continued, for the purpose of the *venue,* is erroneous. When done, it is done; and it is a mere fiction to say that a thing done is continued, because the parties subsequently do something in pursuance of it. Continuance is not creation.

It may be that such overt *acts* are evil and *ought* to be made criminal, but they *have not been made conspiracies by Congress.* Many such acts are made criminal, and punished with severity—punished as distinct crimes. This has oftentimes presented the question of merger—the question whether the crime of conspiracy has been merged in the crime which the conspiracy was formed to commit, after it has been committed. The question of merger, however, does not arise here. The question here is this: Assuming for example that a conspiracy was formed in New York, criminal under the

Sherman Act, and that an overt act in furtherance of it was done in Tennessee, was such overt act, a repetition, or renewal, or continuance of the conspiracy, so as to give the Courts in Tennessee jurisdiction to indict, not for the overt *act,* but for the *conspiracy?*

If it be a repetition or renewal, then every overt act is a new conspiracy. That doctrine places the conspirators in such relation that every individual is not only the agent of his associates in evil *doing,* but an agent in *agreeing.* It clothes every conspirator with the power by the mere *doing* of some *act* in furtherance of the object of the conspiracy, thereby to engage his associates in numerous *new* criminal *agreements.* If the selling of fertilizer merchandise, shipping of goods, and writing ordinary business trade circulars and letters, are overt acts—as the indictment avers; and if it be also true that every overt act "continues" the original criminal agreement of conspiracy, in the sense that in every jurisdiction where an overt act is done by any one of the conspirators, all may be indicted *there* for conspiracy, it follows that these defendants have unconsciously and by *a mere presumption of law* committed thousands of crimes; that they have violated the Sherman Act as many times as they have sold merchandise, and made shipments, and sent out circulars.

It is unthinkable that a criminal *agreement* of conspiracy, can be repeated and duplicated by the mere *act of one* of the individuals engaging in the conspiracy, done in furtherance of the object of the agreed conspiracy. Courts may refine and *say* that the agreement is *continued,* but that does not *make* a new agreement. And if it be said that the agreement is "continued", nothing has been really said which puts the crime on a journey, for jurisdictional purposes. What is continued? The old agreement, and if the old one is con-

tinued a new one has not been made. And assume that it has been "continued", what then? It was *committed* when it began to be, not while it is continuing.

If an overt act by one continues or repeats the agreement as to all, so as to give jurisdiction in another district where the act was done, it must also be a renewal in the old original district as well. It follows that the fertilizer companies doing business in Tennessee, not only committed the crime of conspiracy when they engaged in the alleged agreement, but they have all committed new conspiracies every time one of them has shipped fertilizer, opened his mail, paid a laborer, or written a business letter.

The criminal statutes will receive no such construction as that, if they possibly admit of one less oppressive and more reasonable.

Again: Assume that the conspiracy was engaged in, in Tennessee as charged, and that these appellants sold goods, that is did overt acts, in Virginia, and that they were indicted in Virginia for conspiracy, as well as in Tennessee: Assume that they were first tried and convicted in Tennessee, could the plea of former conviction, or once in jeopardy, be interposed in Virginia? It could not if a new offense has been committed.

Every contract, combination, or agreement that operates to restrain trade is illegal. They are *forms* of agreements. It is the *agreement*—an agreement in one of these three forms, that is made illegal.

To prevent the making of such agreements, every person who makes any such contract, or engages in any such combination, or in any such conspiracy, is declared to be guilty of a misdemeanor.

Under the Constitution the person guilty of this misde-

meanor, must be tried in the district in which it was committed; and he cannot be indicted and tried anywhere else.

It is conceded on all sides that those who engage in, or form, a conspiracy in restraint of trade, (or any other kind of conspiracy) may be indicted in the district in which they formed, or engaged in it. But the contention of the Government is that they can also be indicted and tried somewhere else; that all of them can be indicted and tried in any other district in which some *one* of them may commit an "overt act" in furtherance of the object of the conspiracy. That is to say: If these 57 defendants formed or engaged in a conspiracy in restraint of trade in *New York*, and W. D. Rhea sold a ton of fertilizer at the trust price, in *Tennessee* (that is, did an "overt act" in Tennessee), all 57 defendants can be indicted and tried in the latter State. We ask, upon what principle? It is no answer, in a *Federal* Court, to say that it was allowable to do this at the common law, and that it has been held to be allowable in several of the States. There are no common-law crimes in the Federal Court, and State decisions are of no binding force in cases of this character. So the inquiry is, not merely whether cases are to be found which were so decided, but upon what principle were they decided? Is the principle such as to require a like decision here under a Constitution which requires accused persons to be tried in the district in which the offense was committed?

The reason given is that assigned in *People vs. Mather* (4 Wend., 229) which is, that

> "the law considers that where they act, *there* they *renew*, or perhaps, to speak more properly, they *continue* their agreement, and this agreement is renewed or continued as to *all* wherever any *one* of them does an act in furtherance of their common design."

The Court concedes that unless this be the reason "the decision can be accounted for on no other principle."

But does the law, or should the law, so consider?

Two ideas, quite distinct, are involved in this statement—the idea of *continuance*, and the idea of *renewal*. If an agreement of any kind (and therefore every conspiracy-agreement) be "renewed," the implication is that a new, or another, agreement has been made; whereas the notion that the parties "continue" the conspiracy, implies that the same old agreement has been continued or kept in existence.

The Sherman Act makes it unlawful to *make* any contract. It would seem that the offense is complete when the contract is *made*. That which may be done subsequently under the contract has never been regarded as a continuance of the contract; certainly not in such a sense as to transfer or multiply the criminal jurisdiction. The same is true with respect to combinations. In truth, the Sherman Act takes no thought of that which is actually done. Whether the result is reasonable or unreasonable, beneficial or injurious, is of no importance at all. Necessarily therefore the question of renewal or continuance does not arise.

So far as the Sherman Act is concerned the same is true with respect to conspiracies in restraint of trade.

Whether there be a contract or combination, or a conspiracy, there is a *status* or relation established by the agreement which, of course, it is expected will be continued. But that continuing *status* does not operate to make a series of new offenses, nor to put the original offense upon a journey through the districts in which one of the parties may chance to act while the status exists, so as to make as many new distinct crimes as there may be "overt acts."

To illustrate: A man being married, marrries a second

wife. He committed the offense of bigamy when the second marriage was entered into. The bigamous relation or status is continued (we will say) for five years. The man has not committed innumerable bigamies. He has not committed a new crime every day. He has continued the *status*, but that *status* is not the offense. The establishment of that *status*, the act of entering into the second marriage, constitutes the offense. As the status is not the offense, necessarily the removal of the bigamous pair into another district cannot give jurisdiction of the offense. And of course the statute of limitations begins to run from the time when he committed bigamy, and not from the last moment they lived together or kept up the status. (*Gise vs. Commw.*, 81 Penn. St., 428.)

So, here: the continuance of the status, that is the continuing to live up to the criminal agreement is not the offense, and can no more make a new criminal agreement, than does the continuance of the bigamous relation create and multiply the crime of bigamy. Continuance is continuance of that which is, and not the creation of something new.

Now with reference to the idea of "renewal;" a clearer idea is gotten, if we consider a conspiracy under the general conspiracy law, and for the moment leave the Sherman Act out of view.

Under the general law, an overt act is essential in order to *indict*. The crime of conspiracy is completely committed even though there never follows an overt act. But there can be no *indictment* for that crime, until there has been an overt act—because of the *locus penitentiae* policy. However, if there be an overt act, an indictment then lies, even though that act be done out of the United States. It is sufficient to

set the prosecuting machinery in motion if it be done *anywhere.*

Now assume that a conspiracy is entered into by 57 persons in *New York.* Then assume that one of them, A, does some act in furtherance of the object of that conspiracy—some overt act, in *Tennessee.*

According to the Government's contention, all the parties can be indicted in Tennessee for *conspiracy.* Either it is a new conspiracy in Tennessee, or it is not. If it is *not,* the accused must be indicted in New York, where they *created* the *status* and *formed* the conspiracy. If it *is* a new conspiracy, we then have a criminal agreement into which fifty-six persons have been plunged by the fifty-seventh, not only without their assent, but without their knowledge. When they meant to commit one crime, they are made also to commit another by operation of law, at a time and a place of which they are wholly ignorant. Again; if the overt act of A's, in Tennessee, created, a new crime and engaged all the parties in a new conspiracy, where is the overt act (essential to *prosecution*) of this new Tennessee conspiracy? Suppose A goes into Georgia and there commits another overt act, is it an overt act which has relation to the first (or New York) conspiracy, or is it an overt act of the second (or Tennessee) conspiracy, or is it a new Georgia conspiracy itself? Undeniably if the overt act committed in Tennessee formed a new conspiracy, this later overt act in Georgia must also form another new conspiracy; and so on *ad infinitum.*

If that be true, we have (1) a New York conspiracy: (2) An act in Tennessee which is both an "overt act" for the New York conspiracy, *and* a new Tennessee conspiracy in itself; (3) *and* finally an act in Georgia which is an overt act for

the Tennessee conspiracy, and a new Georgia conspiracy in itself.

Unless this be true, the Georgia act must be regarded as an overt act of the New York conspiracy—which leaves the Tennessee conspiracy without any overt act at all, and consequently non-indictable in the Federal Courts.

The absurd consequences of this view are now apparent. The Sherman Act declares every contract, and combination, and conspiracy, in restraint of trade or commerce, to be illegal. The first clause of section one contemplates the *agreement,* and denounces *it* as illegal. The next paragraph of the same section makes every person guilty of a crime, who *makes* any such contract, or *engages in* any such combination, or in any such conspiracy.

There can be no difference of opinion as to the "contract" of the statute. Every such contract is declared to be illegal, and every person who *makes* one is guilty of a crime. Undeniably the act of making the contract, the act of *assuming* and entering upon the contract status, is the crime. The existence at any given time, of the continued contract relation, is not the crime. The statute of limitations runs from the making of the contract, and not from the last day that it was recognized, or acted under, as being in force.

But the Government's insistence is, and indeed, for the exigencies of these cases must be, that a different rule is to be applied to combination-agreements and conspiracy-agreements from that which is applied to contract-agreements, although they are found in the same paragraph and sentence.

The contention is that the words "engage in" used with respect to combinations and conspiracies, do not relate alone to the making, or forming of, or to the creation or establishment of, the conspiracy, but to the status or relation which

is continued, *after* the conspiracy has been created or formed. The idea appears to be that if, for example, a conspiracy in restraint of trade was formed or brought about ten years ago, and was continued until the 26th day of May, 1906, (when this indictment was found) the parties to the conspiracy, inasmuch as it was *existent* on *that* date, *"engaged in"* it, *then,* instead of ten years before.

The statute of limitations is three years, and while the question as to when it began to run is not important in this case, it is one of importance in criminal law. It is not important in the present case, because the date on which the conspiracy which was formed or created, is within the three years before the finding of the indictment. But it is significant that some of the counts of the indictment charge that the defendants engaged in the conspiracy on the 8th day of July, 1903 (when it was formed) while others charge that they engaged in the conspiracy "during the period aforesaid," that is, between July 8, 1903, and May 26, 1906, when the indictment was formed.

There is, however, a question depending upon the interpretation of these words "engage in," of the greatest importance in the present case, to the Government. It is important to ascertain *when* the crime was committed, in order to determine *where* the offenders can be tried. For if the crime of "engaging in" the conspiracy was committed when and where the conspiracy was created or brought into being, or (if already existing) when and where any particular offender joined it, it is obvious that the offenders must be indicted *there.* In that view, it avails nothing for the Government to show that they continued to work under it, and that some of them did *acts* in Tennessee pursuant to it and to effect its object. While it can in such cases be said that they were

engaged in a conspiracy, in the sense that they were *working* under it, it cannot be said that they "engaged in" it in the sense of the statute—that is, it cannot be said that it was *then,* that they formed and established the criminal conspiracy-agreement.

Undeniably the offenders were guilty, if it be a fact that on the 8th day of July, 1903, in the city of New York they formed this alleged conspiracy. In the very hour of such plot they were guilty of the crime. And if, before the Secretary left the city of New York, he bought books for them, or deposited the money paid in by the members or prepared the application for the charter of the Colonial Development Co., they were *indictable.* They could have been indicted and convicted even though they had never done anything else.

The question now presented is whether this act of forming, or creating, or establishing, or joining, this conspiracy, or entering into the conspiracy-agreement, is the crime committed, and described by the words "engage in;" or whether these words mean a status, or contractual *relation.* If the words are to be taken in this latter sense, then whenever any offender is found working under a conspiracy-agreement, or living up to it in his business, or doing business according to it, he may be said to be "engaging in" a conspiracy in the statutory sense.

In which of these senses are the words "engage in" used in the Sherman Act?—is the question now to be determined.

Our view is that an offender "engaged in" a conspiracy, within the meaning of the Sherman Act, whenever and wherever he *embarks* or enlists in it, and that he is not "engaging in" it in the statutory sense whenever and wherever he *employs* himself in accordance with it.

In one view the offender commits the crime of conspiracy one time, somewhere; in the other view he is committing a *continuous* crime, everywhere in the eight States in which he assumes to do business, and in every locality in which he actually does business.

In this view the statute of limitations does not begin to run until he ceases to do business. In the other view it begins to run when the conspiracy-agreement was formed, or entered into.

It is obvious that the statute of limitations begins to run with reference to "contracts," when the contract is made; and it is equally obvious that the parties to these contracts will employ themselves as continuously under them, as do the parties to combinations and conspiracies employ themselves. The punishment for all these offenses is precisely the same, and it is imposed by one and the same statute.

There is no reason apparent why the words "engage in" should not receive the same construction that is given to the word "make." It is criminal to "make" a contract, or to "engage in" a combination or a conspiracy. It is merely a matter of style. We always speak of "making" a contract, but never of "making" a conspiracy. We speak of "forming" or "entering into" or "engaging in" a conspiracy. But the idea is the same in both cases. It is that of making, creating, forming.

The Sherman Act *could* have said that it should be a crime to make a contract in restraint of trade, *or* to do any act to carry the contract out, or to maintain it. The act *could* have said that it should be a crime to make a conspiracy in restraint of trade, *or* to do any act in furtherance of a conspiracy. It could have made it a crime to enlist in these undertakings, *or* to be employed in furthering them, after

they were brought about. But it has not done this. The act contemplates the agreement, and not that which is done pursuant to the agreement. The fact that these acts imply, or evidence the *continued existence* of the agreement, should it be so held, would not even then convert them into agreements, neither can it change the time and place at which the original agreements were made, or formed, or engaged in, or brought into existence.

IV.

THE "SHERMAN ACT," OR THE ANTI-TRUST ACT OF 1890.

The Sherman Act provides that—

> "Every contract, combination in the form of a trust or otherwise, or conspiracy, in restraint of trade or commerce . . . is hereby declared to be illegal.
>
> "Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished," etc.

The cases involving the construction of this act heretofore considered by this Court have been on the civil, not the criminal, side, and the result is that the words "contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce" have not yet been defined. It may possibly be contended that the words "contract," "combination" and "conspiracy" are used synonymously, and therefore that no peculiar meaning is to be attached to any one of them. Upon the other hand, it may be that they denote *different* things, and consequently define different

offenses. If they denote *different* things and define different offenses, it is obvious that an offender indicted for making a contract in restraint of trade, cannot be convicted by proof of a conspiracy in restraint of trade, and conversely, one indicted for engaging in a conspiracy in restraint of trade, cannot be convicted by proof that he made a contract in restraint of trade.

Mr. Justice Holmes understands these words to be used to define two classes of offenses, (1) contracts in restraint of trade, (2) and combinations or conspiracies in restraint of trade; for in his dissenting opinion in the *Northern Securities Case* he said that

> "the words hit two classes of cases, and only two—contracts in restraint of trade, and combinations or conspiracies in restraint of trade, and we have to construe what these respectively are."

It will be observed that he regards the words "combinations" and "conspiracies" as synonymous.*

Our contention is, and this branch of the argument is intended to establish, that—

Contracts in restraint of trade, conspiracies in restraint of trade, and combinations in restraint of trade, are not the same, but three separate and distinct, offenses under the Sherman Act.

HISTORY OF THE ACT.

On the 14th day of August, 1888, Senator Sherman introduced into the Fiftieth Congress, a bill to make illegal, all

* NOTE—It may be remarked that the indictment here particularly in the third and sixth counts, proceeds upon the idea that these two terms are *not* synonymous.

"arrangements, contracts, agreements, trusts, or combinations between persons or corporations made with a view, or which tend, to prevent full and free competition," etc. It was referred to a committee. This bill died with the Fiftieth Congress.

December 4, 1889, Senator Sherman introduced a new bill into the Fifty-first Congress, identical, so far as the language above quoted is concerned, with his original bill. It will be found that the word "conspiracy" did not appear in either of these bills; and an examination also reveals that the term "in restraint of trade" is not to be found in the *body* of any of them. The bill was referred to the Finance Committee, and reported back by it to the Senate, and again referred and reported back, prior to April 1890. It was referred again, for the third time.

April 2, 1890, Mr. Edmunds, the Chairman of the Finance Committee, reported, recommending that *all of the Sherman bill,* after the enacting clause, *be stricken* out, and the amendment which he submitted, be adopted in its stead. *This was done;* and that amendment is the act which is known as the "Sherman Act" today *.

It will be found that the original Sherman Act in its various forms, denounced "arrangements, contracts, agreements, trusts or combinations" as illegal. It did not include "conspiracy."

The bill after it left the Senate, was reported by Mr. Culberson of Texas, Chairman of the Judiciary Committee, to

* NOTE—The bill in its present form was drafted by Senator Hoar, who says that the only reason that he can think of why it is called the "Sherman Act" is the fact that Senator Sherman had nothing whatever to do with it. (Hoar's Autobiog., 70 Years, Vol. 2, p. 362.)

the House on the 1st day of May, 1890, at which time he said:

> "Now it will be observed, Mr. Speaker, that this is a very important principle embodied in the very outset of the bill, and may be stated in this way: Every contract made in restraint of trade between the States or among the States, or with foreign nations, and every combination in the form of a trust or otherwise, or every conspiracy in constraint of trade or commerce, among the several States, or with foreign nations, is denounced as illegal. Now just what contracts, what combinations in the form of trusts, or what conspiracies will be in restraint of the trade or commerce mentioned in the bill, will not be known until the courts have construed and interpreted this provision."
>
> 21 Cong. Rec., p. 4089.

While the bill was under consideration, upon Mr. Culberson's report, Mr. Wilson, of West Virginia, said:

> "Sir, its first section proposes to punish with heavy fines and imprisonment the making of certain contracts, combinations, and conspiracies, and the gentleman from Texas in charge of the bill, as able and clear-headed a lawyer as we have upon the floor, frankly informs the House that just what these 'contracts, combinations, and conspiracies' will be, cannot be known until the courts have considered and interpreted this section."
>
> 21 Cong. Rec., p. 4092.

That the Act creates three distinct offenses, and that the Congress so understood it, is further evidenced by its sixth section. It provides that any property owned *under* any *contract,* or *by* any *combination.* or *pursuant* to any *conspiracy,*

(and being the subject thereof) mentioned in section 1 of this act, and being in course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States and may be seized and condemned. As will be observed this section is so phrased as to carefully distinguish between properties owned by the parties to these different agreements. It is provided that property owned *under* a contract, or *by* a combination, or *pursuant to* a conspiracy, shall be forfeited and may be seized.

It therefore is clear that Congress understood three kinds or classes of agreements to be made criminal, although it was conceded that not until the courts had construed the act could it be definitely stated what particular species of agreements were comprised in the classes contemplated by the statute.

In 1893, one Patterson was indicted under this statute in Massachusetts. In the course of his opinion in that case, Putnam, J., said:

> "I think it is useful to analyze the statute. Separating it into parts we have—first, contracts in restraint of trade; second, combination in restraint of trade; and third, conspiracy in restraint of trade. There can be no question that the second and third parts as thus put, receive color from the first."

This case was argued by Mr. Root, now the Secretary of State, for the prosecution, and his brief is to be found in full in the report of the case. Among other things, Mr. Root said:

> "The statute enumerates three distinct facts—to-wit: (a) contracts in restraint of trade; (b) combinations in the form of trusts, or otherwise, in restraint of trade; (c) conspiracies in restraint of trade.

"Each one of these points to a *separate* and *distinct* class of cases in which, prior to the passage of the act, the courts of England and America had condemned acts injurious to the public interest because of their effect upon trade. In all three the principle of decision and the ground of condemnation, had been that they interferred with the public's right to have trade, and competition in trade, free and unrestricted.

"The first class of acts, (a) include the ordinary contracts which were declared to be void as against public policy, because some of the contracting parties thereby prevented *themselves* from pursuing their occupations, and the public was thus deprived of their contribution to the competition therein.

. . . . . .

"The second division of the statute, viz.: combinations in the form of trusts, or otherwise in restraint of trade, point to a class of cases which, while it may include the first cass, includes also a great number of combinations distinct from ordinary contracts in restraint of trade by a broad line of demarcation. These are combinations in which there is *no* contract which either by its express terms or by implication binds the contracting party *not* to exercise his trade, or not to compete freely with others, but which are declared by the courts in violation of public policy, because they accomplish the effect of preventing freedom of trade and competition. As a rule, the agreements and arrangements by which these combinations are formed are themselves, in their terms and requirements, of the most harmless and innocent character. It is the effect and the effect alone, upon the public interest which causes them to be declared against public policy.

"So long as the arrangements or agreements in regard to trade, made by a combination, produce the

injurious effect, no form of contract or device to produce that effect indirectly avails to escape the consequences.

"The third division of section 1—'conspiracies in restraint of trade'—refers to a class of cases in which the effect upon trade is produced, *not* by contract obligations binding the parties *not* to compete, *not* by pooling arrangements which make it against the party's interests not to compete, but by *preventing others* from carrying on trade.

"An essential element in these cases is that the prevention shall be, *not by means of competition itself* in the ordinary course of business—one competitor driving out another by fair competition—but that the prevention shall be by *unfair means,* which are *themselves* private injuries to the person whose trade is interfered with. Conspiracies to destroy or injury another's business by such means have always been actionable because of the private injury, and indictable because of the public injury, upon the same grounds and for the same reasons which have led the courts to declare contracts and combinations accomplishing the same effect void, as against public policy

. . . . . .

"It appears from the foregoing review that at the time the act now under consideration was passed, restraint of trade, as known to the law, was preventing any one from freely exercising his trade. That this prevention was held to be against public policy, because it deprived the public of the benefit of the prevented industry, and of its competition with others; that all *contracts* which had that effect were held to be void, because they produced that public injury; that all *combinations* which had that effect, directly or indirectly, were held to be unlawful because they produced that injury; that all *conspiracies to* produce that effect upon others by threats,

intimidation, fraud, and other *similar means,* were held to be criminal, because they produced that same public injury.

"Clearly *these* were the 'conspiracies' intended and aptly described in the language of the first section of the statute."

In *United States vs. Debs* (64 Fed. Rep., 724, 747) the Court, (Woods, C. J.) having this Sherman Act under consideration, said:

"But it is more significant than upon the introduction of the bill into the House the Chairman of the Judiciary Committee, as reported in the Congressional Record (Vol. 21, Part Five, p. 4089) made the following statement:

" 'Now, just what contracts, what combinations in the form of trusts, or whatever conspiracies will be in restraint of trade or commerce, mentioned in the bill, will not be known until the courts have construed and interpreted this provision.'

"It is therefore the privilege and duty of the Court, uncontrolled by considerations drawn from other sources, to find the meaning of the statute in the terms of its provisions interpreted by the settled rules of construction. That the original design to suppress trusts and monoplies created by a contract or combination in the forms of trust, which of course would be of a 'contractual character,' was adhered to, is clear; but it is equally clear that a further and more comprehensive purpose came to be entertained and was embodied in the final form of the enactment. Combinations are condemned, not only when they take the form of trusts, but in whatever form found, if they be in restraint of trade. That is the effect of the words 'or otherwise.' It may be that these words should be deemed to include only forms of like character—that

is to say, some form of contract as distinguished from tort; but if that be so, it only emphasizes and makes imperative the inference, which otherwise, it seems to me, would be sufficiently clear, that the word 'conspiracy should be interpreted *independently of the preceding words.* It is *hardly to be believed* that the words 'or otherwise' were used simply for the purpose of giving *fuller* scope to the antecedent words 'contract' and 'combination,' and *then* 'conspiracy' added, *merely* for the same purpose. Construed literally, the terms used in the body of this act forbid all contracts or combinations in restraint of trade or commerce; but that construction is controlled by the title which shows that only unlawful restraints were intended. But what constitutes unlawful restraint is not defined; and, under the familiar rule that such Federal enactments will be interpreted by the light of the common law, I have no doubt but that this statute, in so far as it is directed against contracts, or combinations in the form of trusts, or in any form of a 'contractual character' should be limited to contracts and combinations, such, in their general characteristics, as the courts have declared unlawful. But to put any such limitation upon the word 'conspiracy' is neither necessary, nor, as I think, permissible. To do so would deprive the word, as here used, of all significance. It is a word whose meaning is quite as well established in the law as the meaning of the phrase 'in restraint of trade' when used—as commonly, if not universally, that phrase has been used—in reference to contracts. A conspiracy, to be sure, consists in an agreement to do something; but *in the sense of the law,* and therefore in the sense of this statute, it must be an agreement between two or more to do, by concerted action, something *criminal* or *unlawful,* or it may be to do something lawful, *by criminal or unlawful*

means. A conspiracy therefore is *in itself* unlawful, and in so far as this statute is directed against conspiracies in restraint of trade among the several States, it is *not* necessary to look for the illegality of the offense in the *kind* of restraint proposed; and since it would be unnecessary, it would be *illogical* to conclude that *only* conspiracies which are founded upon, or intended to be accomplished by means of contracts or combinations in restraint of trade are within the purview of the act. It would be to make tautologous, words which have distinctly different meanings, and to deprive the statute, in a large measure, of its just and needful scope. Any proposed restraint of trade, though it be in itself innocent, *if* it is to be accomplished by *conspiracy,* is unlawful.

. . . . . .

"It would *not,* I suppose, be enough in an indictment to charge *conspiracy* in restraint of trade *in the langauge of the statute,* but it would be necessary, unless the proposed restraint be shown to be *in itself* unlawful, to allege the *illegal means* intended to be used in order to effect the restraint; and whether the means should be averred to have been used "in restraint of, or to 'restrain' trade, could hardly be important."

Mr. Justice Holmes, as already stated, expressed the opinion, while dissenting in the *Northern Securities Case* (193 U. S., p. 403) that the act denounced only two classes of offenses. That view he explained in the following language:

"The act says nothing about competition. I stick to the exact words used. The words hit two classes of cases and only two—contracts in restraint of trade, and combinations or conspiracies in restraint of trade, and we have to construe what these respectively are.

Contracts in restraint of trade are dealt with and defined by the common law. They are contracts with a stranger to the contractor's business (although in some cases carrying on a similar one) which wholly or partially restrains the freedom of the *contractor* in carrying on that business as otherwise he would. The objection of the common law to them was primarily on the contractor's own account. The notion of monopoly did not come in unless the contract covered the whole of England. Of course the objection did not apply to partnerships, or other forms, if there were any of substituting a community of interest where there had been competition. There was no objection to such combinations merely as in restraint of trade, or otherwise, unless they amounted to a monopoly. Contracts in restraint of trade, I repeat, were contracts with strangers to the contractor's business, and the trade restrained was the contractor's own.

"Combinations or conspiracies in restraint of trade, on the other hand, were combinations to keep *strangers* to the agreement *out* of business. The objection to them was not an objection to their effect upon the parties making the contract, the members of the combination or firm, but an objection to their intended effect upon strangers to the firm, and the supposed consequent effect upon the public at large. In other words, they were regarded as contrary to public policy because they monopolized or attempted to monopolize some portion of the trade or commerce of the realm.

"All that is added to the first section by section 2 is that like penalties are imposed upon every *single* person who, *without combination,* monopolizes or attempts to monopolize commerce among the States; and that the liability is extended to attempting to monopolize any part of such trade or commerce."

It does not appear to be contended by any one that the contracts, combinations, and conspiracies of the statute are one and the same, or that these words are merely synonymous terms. The controversy is as to whether the words "hit" two classes, or hit three classes of offenses.

We respectfully submit that the best-sustained view is that *three* classes of offenses are defined, or "hit" by this Act. If so, it is in order to inquire what they are; what are the contract, the combination, and the conspiracy hit by the Sherman Act?

The *contracts* denounced as unlawful by this act, are such agreements as have the effect to put some of the *parties* thereto *out* of business; to restrain such parties within a greater or less area, or for a greater or less time, from engaging in competition in business or trade.

The *combinations* denounced as unlawful, are such agreements as contemplate that the *parties* thereto shall *continue* in business, apparently in competition with each other, or with others, but *upon terms* which tend to restrict competition, or to fix and control prices.

The *conspiracies* denounced as unlawful, are such agreements as contemplate the suppression or diminution of competition on the part of others, or the control of prices, through the commission of some criminal or illegal act, *or* through some act not unlawful in itself by the use of criminal or illegal means. By "illegal," is not meant only those acts or methods which are positively criminal because in violation of some criminal law, but also those which are corrupt, dishonest, fraudulent, or immoral. (15 N. H., 396.)

To illustrate: An agreement between A, B, and C, manufacturers of, and dealers in, fertilizers, whereby B and C agree to shut down their factories and to retire from business

for a greater or less length of time, is an illegal "contract" within the meaning of the Sherman Act.

An agreement between A, B, and C, manufacturers of, and dealers in, fertilizers, to sell their products at a price *fixed by* a majority of them, or by a committee for them, is an illegal "combination," within the contemplation of the Sherman Act.

An agreement between A, B, and C, manufacturers of, and dealers in fertilizers, to bribe the agent of D, a rival in business, or to adulterate D's product, or to slander D's goods, or to break up his contracts with his customers, is an illegal "conspiracy" within the meaning of this act.

Necessarily certain elements or ingredients in all of these contracts, combinations, and conspiracies, in restraint of trade, are identical. There is an *agreeing together,* for the *purpose* of restraining competition, in all alike; but there are certain *other* elements (as appears from what has been already stated) which are present in some of these forms, but not in the others; and it is *these* elements or ingredients, that *determines* to which class of offenses any given offense must belong. The distinguished elements or characteristics are these: agreements which by consent withdraw or exclude one or more of the parties there to from competition in trade, without more, are "contracts;" agreements which continue the parties in business, but so bind them as to restrict competition as among themselves, or fix or control prices, are "combinations;" and agreements to restrict competition in trade, or control prices through the commission of some criminal or illegal act *upon another,* or the commission of some act lawful and innocent in itself, through illegal or criminal means, are "conspiracies."

The necessity for, as well as the signification of, the classification made by the act, is fully appreciated only when it is remembered that at common law contracts that were even in *unreasonable* restraint of trade, were *not* on that account unlawful in the sense of being criminal, or even giving rise to a civil action for damages. They were merely void.

The case of the *United States vs. Addyston Pipe & Steel Co.* (85 Fed. Rep., 279) decided by the Court of Appeals for the Sixth Circuit, was heard by Mr. Justice Harlan and Judges Lurton and Taft. Judge Taft speaking for the Court, said:

> "Contracts that were in unreasonable restraint of trade at common law were not unlawful in the sense of being criminal, or giving rise to a civil action for damages in favor of one prejudicially affected thereby, but were simply void and not enforcible by the Courts."

Among the cases which enounce and establish this rule are the following:

Mogul Steamship Co. vs. McGregor, Gow & Co., L. R. (1892) App. Cas., 25;
Hornby vs. Close, L. R. Q. B., 153;
Hilton vs. Eckersley, 6 El. & Bl., 47, 66;
Aetna Life Ins. Co. vs. Kentucky, 45 L. R. A., 355;
Snow vs. Wheeler, 113 Mass., 186;
Commonwealth vs. Hunt, 4 Metc., 134;
Orr vs. Home Life Ins. Co., 12 La. Ann., 255;
Macauley Bros. vs. Tierney, 19 R. I., 255; S. C., 37 L. R. A., 455;
Longshore, etc., Co. vs. Howell, 26 Ore., 527; S. C., 28 L. R. A., 414;
2 Bishops Crim. Law, Sec. 233.

The Sherman Act was passed to give such contracts an unlawful or criminal character. In the *Addyston Pipe & Steel Co. Case,* the Court said:

> "The effect of the act of 1890 (*the Sherman Act*) is to render such contracts unlawful in an affirmative or positive sense, and punishable as a misdemeanor, and to create a right of civil action for damages in favor of those injured thereby, and a civil remedy by injunction in favor of both private persons and the public, against the execution of such contracts, and the maintenance of such trade restraints."
> 85 Fed. Rep., 279.

Undeniably modern cases are to be found which hold that at common law combinations in unreasonable restraint of trade were "conspiracies" because of the coercive power of numbers. These cases stand apart, and have been repudiated by the Federal Courts, as already shown by the *Addyston Pipe & Steel Company* case. This is shown also by the very able opinion of the Supreme Court of Kentucky in the case of the *Aetna Life Ins. Co. vs. The Commonwealth,* 45 L. R. A., 355.

The argument thus far has been directed to show, and we submit, has shown, that

(1). (a) Contracts in restraint of trade, (b) combinations in restraint of trade, and (c) conspiracies in restraint of trade, are separate and distinct classes of offenses—are different misdemeanors; and

(2). The distinctive, and distinguishing features of these offenses are these: a "contract" is an agreement which contemplates that one or more of the *parties* thereto, by mutual consent, shall be *retired* from competitive business; a "combination" is an agreement which contemplates that the *parties*

thereto shall *continue* in business, apparently competitive, but in reality not so—that they shall fix or control prices so as to have them uniform; and a "conspiracy" is an agreement which contemplates that the competition of *persons not parties* to the agreement, shall be crippled, or stifled by methods or means which are *unlawful.*

The indictment returned against the appellants does not charge that they made a contract in restraint of trade, neither does it charge them with having engaged in a combination in restraint of trade. The charge in every count is that they engaged in a conspiracy. As stated, four counts charge that they engaged in a conspiracy in restraint of trade in violation of the Sherman Act, and two counts charge that they conspired to engage in a combination in violation of Section 5440 R. S., the general conspiracy statute. These two counts are framed upon the assumption that a conspiracy is one thing, and a combination another. They charge that the defendants conspired to commit an offense—that is to engage in a combination in restraint of trade. If a conspiracy and a combination be the same thing, then these two counts [merely using a convenient phrasing] charge that the defendants *conspired to conspire.*

Let us now examine into the "conspiracy" of the Sherman Act.

It is to be remarked that this act is not nomenclatorial. It declares that every person who makes any contract, or engages in any combination, or conspiracy, in restraint of trade, shall be guilty of a "misdemeanor," but it does not give any name to that misdemeanor.

Engaging in a *conspiracy* in restraint of trade, is the particular misdemeanor of which the appellants stand accused. In endeavoring to ascertain what the conspiracy of this act

is it must be borne in mind that there are no common-law offenses against the United States. Be an act ever so bad, and deserving of punishment, unless there is a Federal Statute making it criminal, it cannot be punished in the Courts of the United States.

There are no common-law offenses against the United States.

United States vs. Britton, 108 U. S., 206;
United States vs. Pettibone, 148 U. S., 203;
United States vs. Cruikshank, 92 U. S., 564.

The common law has no force to make an act an offense which is not made one by an Act of Congress. (4 Fed. Rep., 204.)

Nevertheless when an offense is denounced by the Federal Statute without defining it, which offense is defined by and known to the common law, that law can be looked to in order to construe the statute and *define* its terms.

United States vs. Coppersmith, 4 Fed. Rep., 200;
United States vs. Trans, Miss. Frt. Ass'n, 58 Fed. Rep., 67;
United States vs. Armstrong, 2 Curt., 446;
McCool vs. Smith, 1 Black., 459, 469;
Pettibone vs. United States, 148 U. S., 203.

Although this is true, the Federal Courts have no *jurisdiction* over offenses unless they be given jurisdiction by the Constitution, laws, or treaties of the United States. (*Pettibone vs. United States,* 148 U. S., 203.)

> "Nothing is better settled," said Judge Hammond in *United States vs. Coppersmith,* 4 Fed. Rep., 204, "than that we cannot look to the State laws in the criminal jurisprudence of the United States for the characteristic elements which go to make up offenses

> and enter into it as a part of its legal status; nor to the common law; nor even to the character of the punishment. The Federal Courts take no cognizance of the State statutes in criminal proceedings and deduce no criminal jurisdiction from the common law, which has no force, directly or indirectly, to make an act an offense, not made so by Congress; though in all matters respecting accusation and trial of offense not otherwise provided for, we are referred to the laws and usages of the State where the judicial system was organized."

In *United States vs. Benson* (7 Fed. Rep., 591, 594) the Circuit Court of Appeals for the 9th Circuit said that—

> "The national Courts cannot resort to the common law as a source of criminal jurisdiction. Crimes and offenses cognizable under the authority of the United States can only be such as are expressly designated by law. It devolves upon Congress to define what are crimes, to fix their punishments, and to confer *jurisdiction* for their trial."

Such is the language of Judge Jackson in *In re Greene,* 52 Fed. Rep., 111.

The Sherman Act neither defines nor describes a conspiracy. It uses the word upon the assumption that it had a settled, established meaning. And so it had. Section 5440 of the Revised Statutes, which is the general conspiracy statute, passed by Congress in 1867, provides that persons who *conspire* to commit an offense against the United States shall be punished, but does not define what it is persons must do, in order to "conspire." However, we know that by "conspiracy" was meant that which was a conspiracy at the common law. A conspiracy was well defined at common law, and it is well established that when an offense is denounced by name by a

Federal Statute without defining it, and it is one which has a settled defined meaning at common law, that law can be looked to in order to construe the statute and define its terms.

Pettibone vs. U. S., 148 U. S., 203;
United States vs. Trans-Mississippi Ass'n, 58 F. R., 67;
United States vs. Armstrong, 2 Curt., 446;
McCool vs. Smith, 1 Black, 459, 469.

At the time the Sherman Act was passed the meaning of the word "conspiracy" was established. It had the same meaning in Federal law that it had at common law. That is to say, a conspiracy is "a combination of two or more persons, by concerted action, to accomplish a criminal or unlawful purpose, *or* some purpose not unlawful in itself, by criminal or unlawful *means.*"

Pettibone vs. United States, 148 U. S., 197, 203;
United States vs. Addyston Pipe & Steel Co., 85 Fed. Rep., 818 (Taft, J.);
Drake vs. Stewart, 76 Fed. Rep., 142;
United States vs. Debs, 64 Fed., 724;
United States vs. Benson, 70 Fed., 594;
Boutwell vs. Marr, 43 L. R. A., 803; S. C., 76 Amer. State Rep., 746.

A conspiracy then, both at common law and under Federal law, is a combination of persons, by concerted action, to do something unlawful, *or* something in itself lawful, by unlawful means.

To make a *contract* in restraint of trade is criminal *only* because the Sherman Act says it shall be criminal. To engage in a *combination* in the form of a trust, or otherwise in restraint of trade, is criminal for the same reason, only—that is, because the Sherman Act says it shall be criminal.

To engage in a *conspiracy* to commit any "offense" was criminal under Section 5440 of the Revised Statutes, the general conspiracy law, long before the Sherman Act was passed. It is criminal also under the Sherman Act to engage in a particular kind of conspiracy, because the act provides that conspiracies in restraint of trade shall be criminal. As a consequence, *unless* the Sherman Act has superseded Section 5440 in so far as conspiracies which "hit" *trade and commerce* are concerned, such conspiracies are criminal for two reasons: They are criminal because the Sherman Act says they shall be criminal, and they are criminal also because Section 5440, the general conspiracy statute, says that *all* conspiracies shall be criminal. While there may be two reasons, yet, there is only one crime, for that Section 5440 is modified or *superseded* to the extent, and in the one particular, above mentioned, by the Sherman Act.

The *means* employed by a "combination" are not criminal or illegal under any law. The combination agreement itself is illegal, because the Sherman Act makes it illegal. But that act takes no notice whatever of the means used to effectuate the object of the combination.

The reason why a confederation is a "combination" and not a "conspiracy" is that it does not directly relate to strangers, and the means it employs are not illegal. It follows that the means to be employed are of the utmost importance. Illegal or criminal means will convert associations innocent in themselves into conspiracies.

As previously explained, agreements which tend to restrain trade through means which are innocent, and which contemplate that some of the parties thereto shall be retired from

business by consent, are "contracts"—the contracts denounced as illegal by the Sherman Act.

Agreements which restrain trade through means which are innocent, and which contemplate that the parties thereto shall remain in business controlled by a common understanding, are "combinations"—the combinations denounced by the Sherman Act.

But agreements which restrain trade through means that are criminal, or unlawful, *apart from the Sherman Act,* and which are directed against strangers to the agreement, are "conspiracies"—the conspiracies denounced by the Sherman Act.

In the latest edition of Greenleaf on Evidence (the 16th) a conspiracy is thus defined:

> "Without attempting to reconcile all the cases, a task nearly hopeless in the present undefined law of conspiracy, a general rule may be adduced from the current of well considered cases, that an indictable conspiracy must be a corrupt confederation to promote an evil in some degree *criminal,* or to effect some wrongful end by means of having some degree of *criminality.* Although in some cases it has been said that if the end is *unlawful,* concerted action to promote it is indictable; yet the word *"unlawful"* is to be taken in the sense of *criminal,* as it is unlawful to commit a trespass; still, no indictment will lie for a conspiracy to commit such a civil injury."
>
> Greenleaf on Evidence, Sec. 90*a* (16 Ed.).

Whenever these two elements are present in the agreement of confederation, namely: (1) a purpose against others, and the adoption of means that are illegal, the confederation is a conspiracy; and whenever that conspiracy directly tends to

affect trade, or stifle competition, it then assumes a form that is criminal under the Sherman Act.

The Sherman Act deals with "conspiracies" just like it deals with "contracts"—it makes *all* of them that are in restraint of trade, criminal. So far as the Sherman Act is concerned, a "conspiracy" to do something criminal in restraint of trade, and a conspiracy to do something not illegal in itself, by the use of criminal means, in order to restrain trade, are mere MEANS *to an end,* equally and alike.

A conspiracy, it matters not which kind it is, is a conspiracy: it is one of the agencies or methods employed to restrain trade, which are forbidden by the Sherman Act.

If it be true (and it is), that the element of criminality or *illegality* must be present, either as a means or an end, in a contract or agreement, in order to convert it into a conspiracy; if it be true that this *bad* element must be present in order to convict anybody under conspiracy law, of "conspiracy," it must also be true that in order to conviction (under the Sherman Act) of unlawful restraint of trade through the instrumentality of a *conspiracy,* it must appear that the persons accused have committed the offense of conspiracy—that they have engaged in a confederation marked and characterized by this *bad* element. In order to convict (of conspiracy) under the Sherman Act it must appear (1) that the accused have engaged in a "conspiracy," (2) and that that conspiracy tends to restrain trade. If these things are made to appear, the accused are guilty—guilty of committing a properly described, but unnamed, misdemeanor. They are guilty of violating the Sherman Act, *through means of a conspiracy.*

As will now be perceived, persons may be guilty of the crime of violating this Act by means of a "contract" which in itself, apart from the Sherman Act, is not criminal. They may be

guilty of the crime of violating this Act by means of a "combination" which in itself and apart from the Act, is not criminal. They may be guilty of violating this Act by means of a "conspiracy" which in itself and apart from the Sherman Act, is criminal. In this last mentioned instance we have a crime within a crime—a crime called "conspiracy," committed and employed as a *means* to commit another crime, an *unnamed* misdemeanor created by the Sherman Act.

The four counts based on the Sherman Act evidently proceed upon the assumption that inasmuch as the defendants are charged with violating that act by engaging in a conspiracy (not a contract, nor a combination) it was necessary for the indictment to be according to the forms used in conspiracy. Accordingly *overt acts* are set forth, and so also are the *means* employed to effect the object of the conspiracy.

The "overt act" is not a feature of the Sherman Act. It denounces certain *agreements,* and punishes those who enter into these agreements, without regard to acts in furtherance of them. Nor is it necessary for the indictment to contain averments as to overt acts when the Sherman Act is charged to have been violated through the form of a conspiracy, because the defendants in such case are not indicted for conspiracy, but for committing something else—the misdemeanor denounced by the Sherman Act. In case of conviction the punishment inflicted is not that prescribed by Section 5440 (the conspiracy statute), but is that prescribed by the Sherman Act, the Anti-trust statute.

It is necessary to aver in the indictment that an overt act has been committed, in all cases where the defendants are indicted under § 5440 for conspiracy, for the reason that this statute requires it, in order to *conviction;* but the Sherman Act makes no such requirement.

However, when it is charged that the Sherman Act has been violated by means of, and through a confederation in the form of, a "conspiracy," whatever is necessary to make out a conspiracy must be averred. It must be averred that the conspiracy was to do something unlawful, as, for example, to burn the fertilizer plant of a rival, or to secretly adulterate his goods, in order to cripple his competition, or that the conspiracy was one to do something (innocent enough in itself) by the use of such illegal means as made it criminal.

Not one of the four counts now under consideration charges that the defendants conspired to commit any crime, or to do any specific thing which was unlawful or criminal. Neither does any of them aver the employment of illegal or criminal *means* to attain an object apparently innocent in itself.

The *means* employed to restrain trade by the "conspirators" are set forth in detail, *but they are not illegal or criminal.*

The means alleged are these:

(1) They, the defendants, agreed upon uniform and non-competitive prices;

(2) They paid money into a common fund to be paid back to the conspirators upon an allotment based upon the quantity of goods sold;

(3) The terms upon which fertilizer merchandise should be sold to customers, were fixed and made uniform and non-competitive;

(4) They brought out a Canada corporation as an intermediary and common agent, to secure co-operative and faithful performance of the conspiracy agreement;

(5) They met together (the individuals did) to discuss and further the objects of the unlawful conspiracy; and

(6) They issued price lists in accordance with the agreement which they had made.

It will be observed that *not one of these things is criminal or unlawful.* Neither do they touch others, strangers to the agreement. As a consequence, no agreement to do any of these things, nor an agreement to use these means, can be a *conspiracy.* Why? Because in order for that to be a conspiracy, there must be an agreement to do something which is unlawful, *or* something innocent in itself by unlawful means. There is no Federal Statute, *apart from the Sherman Act,* which makes any of the ways and means set forth unlawful; nor are they unlawful at common law, even if it were allowable to look to that law. It follows that these counts of the indictment really charge no offense.

Numerous acts are set forth as "overt" acts. Not one of them is illegal or criminal. They are all acts such as writing checks, sending out price lists, making sales, and shipping merchandise, done in the usual course of business, and such only as the defendants would have done had the illegal conspiracy never existed.

It is obvious, from what can be gathered from the indictment, that the offense for which the defendants might possibly have been indicted is the crime of engaging in a *combination* in restraint of trade. But this has not been done. The charge, and the only charge, is that of engaging in a conspiracy. The agreement, and the means employed to further it, are all set out, but they do not amount to a charge of conspiracy: and a conspiracy must be charged, since a conspiracy *as a means* is an essential element in this one of the three crimes, denounced by Section 1 of the Serman Act.

IV.

The law of "overt act" has no place in the trial of affenses under the Sherman Act.

Now as to the Sherman Act: Of course in so far as the law of "conspiracy" is concerned what has just been said with reference to the subject in general, applies with equal force to the Sherman Act, inasmuch as it does not even assume to change the law upon that subject.

Contracts, combinations and conspiracies "in restraint of trade" are unlawful; that is every agreement in the form of a contract, combination or conspiracy which directly tends to stifle competition in trade and commerce, is unlawful. (*United States vs. Joint Traffic Association,* 171 U. S., 577.)

It was well expressed by Grosscup, J., in *United States vs. Swift & Co.* (122 F. R., 534) when he said:

> "It is clear from them (meaning the decisions of the Supreme Court) that restraint of trade is not dependent upon any consideration of reasonableness or unreasonableness in the combination averred; nor is it to be tested by the prices that result from the combination. Indeed, combination that tends directly to lower prices to the consumer, may, within the doctrine of these cases, even as against the consumer be restraint of trade; and combination that tends directly to higher prices, may as against the producer be restraint of trade. The statute, thus interpreted has no concern with prices, but *looks solely to competition,* and to the giving of competition full play by making illegal any effort at restriction upon competition. Whatever combination has the direct and necessary effect of restricting *competition* is, within the meaning of the Sherman Act, as now interpreted, restraint of trade."

And in *Whitwell vs. Continental Tobacco Co.* (125 F. R., 454, 457) the Circuit Court of Appeals said that

> "It has now been settled by repeated decisions of the Supreme Court that this question must be tried, not by the intent with which the combination was made, nor by its effect upon traders, producers, or consumers, but by the necessary effect which it has in defeating the purpose of the law. That purpose was to prevent the stifling or substantial restriction of competition, and the test of the legality of a combination under the act which was inspired by this purpose is its direct and necessary effect upon competition in commerce among the States. If its necessary effect is to stifle or to substantially restrict free competition, it is a contract, combination, or conspiracy in restraint of trade, and falls under the ban of the law."

The temporary and the permanent effects of an agreement touching trade or commerce may be so different, and the ultimate effect so difficult to determine, that it was deemed best by the Congress not to regard the prices which might actually immediatly follow as the result of trade combinations, nor the acts done pursuant to such combinations themselves. Accordingly the Sherman Act was leveled at *agreements*. It made every contract-agreement, every combination-agreement, and every conspiracy-agreement illegal, which directly tends to stifle *competition* in trade or commerce.

What the parties may *do* after the agreement has been entered into, and what *prices* actually prevailed thereafter, is immaterial. The sole inquiry is as to the *agreement*—as to whether *it* directly tended to restrain *competition* in trade or commerce.

The question is not what Congress could have done, or

what in our judgment it ought to have done, but what it did actually do.

Congress could have said that any *act* done pursuant to, or in furtherance of, one of these forbidden agreements should also be criminal, or unlawful. It could have said that it should be criminal to raise prices as the result of such combinations, and unlawful agreements. But Congress has said nothing of the kind. The Sherman Act is leveled at *agreements* alone. This being true it is going a great way to say by judicial construction, that acts done in furtherance of any such criminal agreement, shall be regarded as renewals and continuances of the agreements themselves, not only in order to multiply the offenses, but for purposes of the *venue* also—so as to enable an indictment to be brought anywhere that any one of the offenders may chance to do the act.

This Act may be violated, as we have seen, in three ways—through contracts, through combinations, and through conspiracies, which operate to restrain trade. With respect to "contracts," the Act is violated when the contract is made. The same is true with respect to "combinations." The Act is violated the moment they are made. No "overt act" was ever thought of, or contemplated, in connection with contracts or combinations. The offense is complete, and the guilty persons may be proceeded against, immediately.

But in conspiracy-law there has been introduced a doctrine known as the law of "overt act." As elsewhere shown, the crime of conspiracy however, is complete when it is entered into, both at common law and under the Federal Statute. The conspirators may be proceeded against at once, under the common law, even though no overt act has ever been committed. It is not thus, however, under our Federal

Statute. Although the agreement or combination is the offense, and although that offense is complete as soon as the agreement has been made, as a matter of public policy the hand of prosecution is stayed by the Federal Statute so as to give a *locus penitentiae*, until some act, commonly called an "overt act," has been done. Then, and not until then, can the *prosecuting* machinery be put in motion. It is a mere matter of governmental policy, just as is the policy to suspend the hand of prosecution after three years. The suspension of the prosecution until there has been an overt act, and the second suspension of prosecution after the statute of limitations has run, are both matters pertaining to the *prosecution*, not to the crime. The crime of conspiracy is complete when the agreement is made.

Although one accused of conspiracy cannot be *indicted* under the Federal Statute, *for conspiracy*, until some act has been done to effect the object of that conspiracy, it does not follow that he cannot be indicted under the Sherman Act for agreeing to restrain trade by means of a conspiracy, until some overt act shall have been done in pursuance of the conspiracy; since, if that were true, there would exist this singular condition: Persons making contract—agreements, or combination-agreements, may be proceeded against at once, while persons making conspiracy-agreements cannot be proceeded against, *until* some act to effect its object has been done; and if they be discovered before they have chanced to do such act, and then never act, it follows that they cannot be proceeded against at all. In this view, those guilty of perhaps the worst form of unlawful agreement in restraint of trade, would have an immunity either partial or total, according to circumstances, which none of the others possess.

Surely no such undesirable interpretation as this will be given to the Sherman Act.

This Act is leveled at all forms of agreements in restraint of trade. Conspiracy is a mere form of agreement—merely a *means* to an end within the contemplation of the Sherman Act. That Act does not punish for conspiracy, but for unlawfully restraining trade, through the instrumentality of a conspiracy. It recognizes conspiracy as a species of agreement, or unlawful means, through which trade may be restrained, and therefore it denounces every conspiracy-agreement, which operates to restrain trade—just as it denounces all contract-agreements and combination-agreements which do the same thing. Whenever the conspiracy is complete, the Sherman Act is infracted, even though no overt act ever be done. The Sherman Act offers no *locus penitentiae* to anybody, and authorizes a prosecution against everybody *at once*. It makes no inquiry to ascertain whether the offenders have committed an overt act, because it does not assume to punish conspirators for *conspiring*. It punishes misdemeanants for the offense of *restraining trade* through the medium of a conspiracy, and it stops only long enough to inquire whether a conspiracy which operates to restrain trade, has been formed. If so, the complete offense against the Sherman Act has been committed. If the conspiracy is not one which restrains trade, the Sherman Act leaves the Conspiracy Statute to deal with it. If it does restrain trade the Sherman Act does deal with it, not to punish for conspiracy, but to punish for the agreement which employs the conspiracy as a means to restrain trade.

The "overt act" is no part of the *offense* of conspiracy, even under conspiracy law. Then how can it be a part of the *offense* under the Sherman Act? If the Sherman Act gives

no *locus penitentiae* to contract agreements, nor to combination-agreements, how can it to conspiracy-agreements, since it deals alone with *agreements* which offend *it*? It does not deal with conspiracy as a crime, for the purpose of punishing *conspirators*, but it contemplates the conspiracy merely as a criminal *means* to the commission of another crime which it *does* punish—that misdemeanor which is committed by those who violate the Sherman Act.

The result is that the "act" of Section 5440, of the Revised Statutes—the "overt act" of Conspiracy Law, relating as it does to the procedure, and not being an element or part of the crime of conspiracy itself, is wholly irrelevant. It has no place, and is to be left altogether out of view, in cases arising under the Sherman Act.

That this is true is obvious from another point of view: Suppose that the statute of limitations in conspiracy to commit a crime (which is only a misdemeanor) is three years; and that the limitations upon prosecutions under the Sherman Act is five years; suppose further that *four* years after A made a contract in restraint of trade, and four years after B engaged in a combination in restraint of trade, and four years after C engaged in a conspiracy in restraint of trade, they are all indicted. Obviously A and B cannot successfully plead the statute. Can C, the most wicked offender of them all? If he be indicted under Section 5440, for conspiracy, he can plead the statute of three years; but inasmuch as he is charged with violating the Sherman Act, he cannot interpose that three-year statute. The fact that a conspiracy was the instrumentality, or *means* by which he was enabled to commit the offense of unlawfully restraining trade, cannot enable him to interpose the conspiracy-statute of limitations,

since the unlawful-restraint-of-trade statute, is the only one that applies.

It results that the offense of violating the Sherman Act is committed where the agreement is made, and not where an "overt act" may be done pursuant to the agreement. Or to speak precisely, unless the unlawful *agreement* in restraint of trade which the defendants have been indicted for making or engaging in, was made or entered into in the Middle District of Tennessee, the Courts of that District have no jurisdiction. It avails nothing to aver or to prove that overt acts to effect the object of the conspiracy were done in the district. The law of "overt act" has no place whatever in prosecutions under the Sherman Act. Overt acts are irrelevant. It is not necessary either to aver or to prove them.

If this view, viz.: that what is known as the overt act in conspiracy law, has no place whatever under the Sherman Act, the decisions beginning with *Brisac's Case* which hold that all conspirators can be indicted in any district where any one of them may do an overt act, are wholly irrelevant. Whether all may be indicted wherever any one does an act is an idle inquiry in cases where the statute knows no such thing as an overt act.

However, the question does arise whether one who "engages in" a conspiracy, *commits* the indictable crime when he embarks in it, or commits it when and while he employs himself in it: whether the crime consists in entering into or joining it, or whether it consists in *being* and *continuing* in it.

If we concede that one of many parties to an existing conspiracy-agreement, by continuing to employ himself in furtherance of its object, thereby "engages in" a conspiracy against trade—thereby commits the crime denounced by the

Sherman Act, it does not follow that he thereby engages his previously contracting associates.

When a conspiracy *exists,* the acts and declarations of one conspirator bind all, but the conspiracy itself can not be *established* as to the others, by what any one person says and does.

The interpretation which the Government puts upon the words "engage in" does this, and even more. According to the theory on which the indictment is framed, the "act" of one of the defendants who employed himself in pursuance of the conspiracy, *in Tennessee,* not only made *him* "engage in," or commit, the crime of restraining trade through a conspiracy, *there,* but had the effect to make all the others, absent and ignorant though they be, do the same thing. It is enough to make the actor "engage in" a crime through his act. It is too much to make him thereby "engage" all his associates.

V.

The third and sixth counts of the indictment charge that the defendants conspired to engage in a combination—that is, that they conspired to combine, or conspired to conspire. There is no such offense under the laws of the United States.

The Government insists that there is no difference whatever between combinations and conspiracies under the Sherman Act. If that be true, it is obvious that the third and sixth counts use the word "combination" instead of conspiracy, as a mere matter of taste, and that what is meant is that the defendants conspired, in violation of Section 5440, to engage in a conspiracy in violation of the Sherman Act: that they

conspired to conspire. Thus stated, the fatal awkwardness of these counts becomes quite apparent.

In our view, however, this is immaterial, since upon the assumption that combinations and conspiracies are different and distinct, there is, as we think, no such offense as a conspiracy to combine, nor as a conspiracy to conspire. Why?

Under Section 5440 there was no such offense as a conspiracy to conspire, because this statute itself was the statute which created the offense of conspiracy under Federal law; and for the further reason that there cannot be *two* distinct bad purposes in a *conspiracy* to *combine.* One and the *same* bad purpose is the life of both equally and alike, and they are *so related through it* as to admit of no such sub-division.

A conspiracy is an agreement. So also is a combination. Agreements *per se* are not illegal. They become illegal only when they are made for a bad purpose.

When it is said that the defendants conspired to combine, or conspired to conspire, after all, no more is said than this; that they have agreed to *further* agree to restrain trade and commerce; to agree *to* agree to suppress, or restrict, the full play of competition in the fertilizer trade.

Prior to the Sherman Act, it was no offense against the laws of the United States to do this. No Federal statute forbade it. There was, however, a statute, Section 5440, which made it a criminal conspiracy to agree by concerted action to do anything which was in violation of the laws of the United States. The Sherman Act *followed* in 1890. It makes it unlawful to agree to restrain trade or commerce. *Now,* the making of such an *agreement* is an offense against the United States. As both statutes relate to criminal *agreements,* it follows that they are to be read and construed together.

The rule applicable to statutes *in pari materia* applies. Statutes or general laws made at different times and relating to the same subject, are to be construed together, *as if they were one statute and forming one system.*

Under this rule, Section 5440, *in so far as it relates to agreements* (or conspiracies) to commit an offense against the *Sherman Act,* must be regarded as having been *superseded* by that later act. An agreement to agree to restrain trade, or a conspiracy to conspire to restrain trade, or a conspiracy to combine to restrain trade, are but different forms of saying that the defendants *agreed to agree* to restrain trade.

It never was contemplated to punish for agreeing *to* agree to commit an offense against the United States. It is dealing sufficiently with the intent, to make agreements to *do* something, violative of some criminal law.

The Revised Statutes, Section 5440, punishes and prohibits all conspiracies to commit an offense against the United States. The later Act, the Act of July 2, 1890, punishes directly conspiracies to perform certain acts. This Act is in substitution of the previous Act so far as those specific offenses are concerned. Under the last Act the offenses prohibited are not conspiracies followed by a direct overt act as are aimed against in Section 5440, but under the words of the Statute the conspiracy is in itself the act prohibited.

To hold otherwise would mean that a man could be tried and convicted twice for an offense against the Act of 1890: viz.: first for the conspiracy itself prohibited by that act, and second, under Section 5440 for the conspiracy to commit an offense by forming the conspiracy prohibited by the Act of 1890.

This has been so decided in the case of *United States vs. Guilford, et al.* (146 Fed. Rep., p. 298).

There the court held that when the conspiracy is the substantive offense, the indictment must charge the distinct conspiracy itself, and an indictment charging a conspiracy to form the conspiracy under Section 5440 is inadmissible.

This case follows the decisions to the same effect in *Chadwick vs. U. S.* (141 Fed. Rep., p. 225), and *U. S. vs. Dietrich* (126 Fed. Rep., p. 664), and is in affirmance of the principle laid down by Chief Justice Cockburn in *Regina vs. Boulton* (12 Cox's Criminal Cases, p. 93).

If the principle announced by these cases be correct (and we see no answer to the reasoning of the learned judges who delivered them), there can be no doubt that under the present indictment the two counts under Section 5440 of the United States Revised Statutes disappear, and we are left with the four counts which were brought under the Act of July 2, 1890, prohibiting combinations and conspiracies in restraint of commerce.

The offenses at which the Sherman Act is leveled, and which it denounces, are agreements in the nature of conspiracies. That Act punishes every offense against *trade and commerce,* which Section 5440 could possibly punish, and more. The construction we insist upon permits no one who commits any offense against trade and commerce, in the nature of a *criminal agreement,* to escape. It makes the system harmonious. Upon the other hand, the notion that *now* there is such an offense as a conspiracy *to conspire* in restraint of trade, or a conspiracy to combine in restraint of trade, or an agreement *to* agree in restraint of trade, is too far-fetched, and attenuated for a system of criminal law.

Furthermore, it is to be remarked that the punishment inflicted by Section 5440 upon those guilty of conspiring to

commit an offense, is much more severe than the punishment inflicted by the Sherman Act for committing the offense itself. No system of laws should be construed to make the punishment for conspiring to commit a given offense greater than for the offense itself, if such construction can possibly be avoided. (See *U. S. vs. N. Y. Cent. & H. R. R. Co.,* 146 Fed. Rep., 298.)

It was not intended by Congress, that an indictment would lie under Section 5440 of the Revised Statutes for conspiracy to violate the provisions of the Sherman Act.

It would be an anomalous and strained construction to so hold. And yet this is the logic and inevitable consequence and result of the position of the Government.

Every conspiracy to restrain interstate trade and commerce, must necessarily fall under the Sherman Act, for that is the statute which made restraint of interstate trade and commerce unlawful and punishable. Before the enactment of that law, contracts, combinations, and conspiracies in restrain of interstate trade and commerce were not unlawful. They could be formed and entered into with impunity so far as the Federal Government was concerned. Their illegality, and the penalty for engaging in them, were declared by the Sherman Act.

That Act named and embraced three means or methods of restraining trade and commerce, each different and distinct from the other, and conspiracy was one of them. If it be possible to restrain trade and commerce in any other manner, or by other means than those three named in and denounced by the Act, such restraint of trade and commerce, thus accomplished, will not be a crime, and cannot be punished.

If this view be correct, it follows that there is no such

offense as that charged in the third and sixth counts, because from the nature of the offense, when the two statutes are read together, Section 5440 is *superseded* by the Sherman Act, *in so far* as agreements or conspiracies *in restraint of trade* are concerned.

VI.

The appeals in these cases were properly taken to this Court instead of to the Court of Appeals. Cases involving the question of personal freedom, or a constitutional question are appealable directly to the Supreme Court.

The rule is that the Supreme Court may review an order of a Circuit or District Court upon an application for a writ of *habeas-corpus* when a constitutional or jurisdictional question, or a question involving the construction of a treaty is involved.

Ekiu vs. United States, 142 U. S., 651;
Horner vs. United States, 143 U. S., 570.

In the case of *Ex parte James Lemon* (150 U. S., 393), the Chief Justice said:

> "By the fourth section of the judiciary Act of March 3, 1891, it was provided that 'a review by appeal, by writ of error or otherwise, from the existing Circuit Courts shall be had only to the Supreme Court of the United States, or in the Circuit Court of Appeals hereby established, according to the provisions of this Act regulating the same. Section five defined the cases in which appeals or writs of error might be taken from the Circuit Courts directly to this Court; by the sixth section the Circuit Court of Appeals were vested with appellate jurisdiction to review final decisions in the Circuit Courts in all cases other than

> those provided for in the preceding section of this Act unless otherwise provided by law.' . . . While the right of appeal from the judgments of Circuit Courts on *habeas-corpus* directly to this Court in all cases, is taken away by the Act of March 3, 1891, that right still exists in the cases designated in Section 5 of that Act, and upon such appeals that amendment may operate."

By Section 5 of the Act it is provided:

> "That appeals or writs of error may be taken from the District Courts or from the existing Circuit Courts direct to the Supreme Court . . . in any case involving the construction or *application* of the Constitution of the United States."

In *Ekiu vs. United States* (142 U. S., 651), it was said, referring to the Act of March 3, 1891:

> "As this case involves the constitutionality of a law of the United States, it is within the appellate jurisdiction of this Court, notwithstanding the appeal was taken since the Act establishing Circuit Courts of Appeal took effect."

This was a case of *habeas-corpus* sued out in the Circuit Court of the United States by a female subject of the Emperor of Japan restrained of her liberty and detained at San Francisco upon the ground that she should not be permitted to land in the United States. The inspector of immigration intervened in opposition to the writ of *habeas-corpus,* stating that the petitioner was an alien immigrant from Yokohama, Empire of Japan, and a person without means of support, without relatives or friends in the United States, and a person unable to care for herself, and liable to become a public charge, and,

therefore, inhibited from landing, under the provisions of the Act of March 3, 1891, and previous acts of which it was amendatory.

At the hearing before the Commissioner of the Circuit Court, the petitioner offered to introduce evidence as to her right to land; and contended that the Act of 1891, if construed as vesting in the officers named therein exclusive authority to determine that right, was in so far unconstitutional, as depriving her of her liberty without due process of law; and that by the Constitution she had a right to the writ of *habeas-corpus* which carried with it the right to a determination by the Court as to the legality of her detention, and, therefore, necessarily, the right to inquire into the facts relating thereto.

The Circuit Court dismissed the writ of *habeas-corpus* and remanded the petitioner to the custody of the Marshal, and she appealed directly to the Supreme Court. The appeal was entertained, the Court saying:

> "As this case involves the constitutionality of a law of the United States, it is within the appellate jurisdiction of this Court."

The case of *Horner vs. United States* (143 U. S., 570 (No. 2)) was an appeal from an order of the Circuit Court of the United States dismissing a writ of *habeas-corpus* brought by Horner who was arrested and committed by a Commissioner on the charge of having unlawfully deposited in the post-office in New York a circular concerning a lottery, addressed to a person in Chicago. The complaint was founded on the statutes of the United States prohibiting the sending of letters, postal cards or circulars concerning any lottery or gift enterprise through the mails of the United States; and

providing for his indictment, trial and punishment either in the district at which the unlawful publication was mailed or to which it was carried by mail for delivery.

One of the grounds on which the appellant sought reversal of the judgment of the Circuit Court dismissing the *habeas-corpus* was that the Act was unconstitutional. It was held that on that ground the appeal direct to the Supreme Court was authorized and proper.

In the case of *Horner vs. United States* (143 U. S., 207 (No. 1)) the Supreme Court entertained without question an appeal from the judgment of the Circuit Court dismissing a writ of *habeas-corpus* and sued out by a person who had been arrested in the Southern District of New York on an indictment found in the Southern District of Illinois against him for using the mails of the United States for the transmission from New York to Chicago of circulars concerning lotteries. The District Judge of the Southern District of New York issued a warrant for removal to Illinois, and Horner was committed to the custody of the United States Marshal for that purpose. He, thereupon, sued out a writ of *habeas-corpus,* in the Circuit Court of the United States, which the Court dismissed, from which judgment he prayed an appeal to the Supreme Court of the United States.

Among the assignments of error in the Supreme Court, there were several, which alleged, that the warrant of removal if executed, would deprive the appellant of the right secured to him by Article 3, Section 2 of the Constitution of the United States and the Sixth Amendment to the said Constitution, to be tried in the State and district wherein the crime was committed.

It will be observed that the appeal in the *Horner case* was predicated upon precisely the same ground that the appeals

in the present cases are based, to wit, the deprivation of the right of the accused to trial in the State and district in which the alleged offense was committed.

Both in the petitions for the writ of *habeas-corpus* and in the Assignments of Error, it is alleged that the offenses charged in the indictment were not committed in the Middle District of Tennessee, and that the warrants of removal if executed, would deprive them of the right of trial in the State and district in which the crime was committed, secured to them, by Article 3, Section 2, of the Constitution and the Sixth Amendment to the Constitution.

It is also alleged in the Assignments of Error in these cases that the appellants were deprived of their liberty without due process of law in violation of the Fifth Amendment to the Constitution; and that they were arrested and ordered removed in violation of the Fourth Amendment of the Constitution.

It is sufficient that the right to be discharged from detention on the writ of *habeas-corpus* is based upon some provision of the Constitution; that it is claimed that the prisoner is denied rights secured by that instrument. Whether the claim or contention is well founded or not is another question, which this Court, after hearing the case must determine. Having invoked the protection of the Constitution, the prisoner is entitled to be *heard* by this Court on appeal.

The right of appeal to this Court in cases similar to this, has not been questioned.

Beavers vs. Henkel, 194 U. S., 73;
United States vs. Greene, 183 U. S., 241;
Hyde vs. Shine, 199 U. S., 62;
Greene vs. Henkel, 183 U. S., 249;
Benson vs. Henkel, 198 U. S., 1.

There is *"no jurisdiction* to commit, nor any to order the removal of the prisoner"—

(*a*) When the indictment charges no offense against the laws of the United States; or

(*b*) When the evidence given fails to show any offense; or

(*c*) When the offense charged was not committed, or triable in the district to which the removal is sought.

This Court has said in *Greene vs. Henkel* (183 U. S., 249, 261) that in such cases there is *no jurisdiction* either to commit or to order a removal of the "offender".

The prisoner who is detained in custody under such circumstances is deprived of his liberty without due process of law. To hold a man in custody under an indictment which charges no offense, or for trial in a district in which the alleged offense was not committed or triable, or with a flat refusal to permit him to introduce evidence to show the absence of probable cause is to deprive him of his liberty without due process of law. Such imprisonment violates Article 3, Section 2, of the Constitution, and the Fifth and Sixth Amendments.

Jurisdictional questions can always be inquired into on *habeas-corpus.*

In re Neilson, 131 U. S., 176;
In re Coy, 127 U. S., 731;
In re Snow, 120 U. S., 274;
In re Sawyer, 124 U. S., 200;
Ex parte Bain, 121 U. S., 1;
Ohio vs. Thomas, 173 U. S., 276.

The jurisdictional question in this case is a constitutional one, for the rights attempted to be asserted by the appellants, are secured by the Constitution of the United States.

Cases involving the question of personal freedom, and the questions arising under the Constitution, are appealable to the Supreme Court directly and not to the Court of Appeals. (*Simmons vs. Simmons,* 175 U. S., 166.)

RESUME.

1. It is the *right* of the "offender" in removal proceedings, when a certified copy of the indictment is the only evidence offered against him, to present evidence to show the absence of probable cause. That is to say: *to show by evidence* that he did not commit the offense charged, or if he did, that it was not committed in the district in which the indictment was found.

2. If, upon looking into the case, it appears that the Court in which it was found had no jurisdiction, or that it charges no offense against the laws of the United States, the order for removal should not be made.

3. The indictment in the present case charges no offense.

None is charged by the third and sixth counts, because there is no such offense as a conspiracy to engage in a combination in restraint of trade; no such offense as a conspiracy to combine, or a conspiracy to conspire.

None is charged by the first, second, fourth, and fifth counts, because they charge a conspiracy; charge that the appellants engaged in a *conspiracy* in restraint of trade. They do not aver that appellants conspired to do something criminal whereby trade would be restrained, but that they

conspired to *directly* restrain trade by and through certain specified and alleged means. These means are *not* illegal or criminal, and therefore no conspiracy was committed, nor is one charged.

4. The law of "overt act" has no place under the Sherman Act. It is irrelevant. No overt act need be either alleged or proved in prosecutions under this act.

5. The act, or overt act, is no part of the offense of conspiracy itself.

The offense, even under general conspiracy law (Section 5440), is complete without it. Nevertheless the offender cannot be *indicted* until an overt act is done. The provision of the statute as to acts was designed to give *a locus penitentiae,* and affects the prosecution alone. It does not relate to the crime.

6. Under the Constitution of the United States, persons indicted for violating the Sherman Act, and Section 5440 of the Revised Statutes, can be tried only in the district in which the crime was committed. They cannot be indicted and tried in another district, upon the ground that some of their co-conspirators committed overt acts therein. A conspirator cannot be indicted in a district in which he committed an overt act, neither can he be indicted in a district in which a co-conspirator committed an overt act, unless he engaged in the *conspiracy itself* therein.

7. There is no such offense as conspiracy under the Sherman Act. There is such an offense as restraint of trade through conspiracy as a means—of engaging in a "conspiracy in restraint of trade or commerce". However complete and finished the conspiracy, unless it is in *restraint of trade,* it does not violate the Sherman Act. Neither does it violate

Section 5440 of the Revised Statutes, if it be in restraint of trade. In such case it is in violation of the Sherman Act alone.

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JOHN S. MILLER,
JOHN J. VERTREES,
JAMES C. BRADFORD,
Attorneys for Appellants.

APPENDIX.

CONSTITUTION, ARTICLE III, SECTION 2.

The trial of all crimes, except in cases of impeachments, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

VI. AMENDMENT TO CONSTITUTION.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

SECTION 1014, REV. STAT. (REMOVAL STATUTE).

For any crime or offense against the United States, the offender may, by any Justice or Judge of the United States, or by any Commissioner of a Circuit Court to take bail, or by any Chancellor, Judge of a Supreme or Superior Court, Chief or First Judge of a Common Pleas, Mayor of a city, Justice

of the Peace, or other Magistrate, of any State where he may be found, and agreeably to the usual mode of process against offenders in such State, and at the expense of the United States, be arrested and imprisoned, or bailed, as the case may be, for trial before such Court of the United States as by law has cognizance of the offense. Copies of the process shall be returned as speedily as may be into the clerk's office of such Court, together with the recognizances of the witnesses for their appearance to testify in the case. And where any offender or witness is committed in any district other than that where the offense is to be tried, it shall be the duty of the Judge of the district where such offender or witness is imprisoned, seasonably to issue, and of the Marshal to execute, a warrant for his removal to the district where the trial is to be had. (*Acts* 1789, *ch.* 20; 1793, *ch.* 22; 1842, *ch.* 188.)

28. Stat. L., 416. (Act 1894, Ch. 301.)

Provided, That it shall be the duty of the Marshal, his deputy, or other officer, who may arrest a person charged with any crime or offense, to take the defendant before the nearest Circuit Court Commissioner, or the nearest judicial officer having jurisdiction under existing laws, for a hearing, commitment, or taking bail for trial, and the officer or magistrate issuing the warrant shall attach thereto a certified copy of the complaint, and upon the arrest of the accused, the return of the warrant, with a copy of the complaint attached, shall confer jurisdiction upon such officer as fully as if the complaint had originally been made before him, and no mileage shall be allowed any officer violating the provisions hereof. . . . . (2 *Fed. Stat. Anno.,* 334.)

SEC. 5440, R. S. (THE GENERAL CONSPIRACY STATUTE.)

If two or more persons conspire either to commit any offense against the United States, in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, all the parties to such conspiracy shall be liable to a penalty of not more than ten thousand dollars, or to imprisonment for not more than two years, or to both fine and imprisonment in the discretion of the Court.

ANTI-TRUST ACT OF 1890. (THE SHERMAN ACT.)

Section 1. Every contract, combination in the form of a trust or otherwise, or conspiracy in restraint of trade or commerce among the several States or with foreign nations, is hereby declared to be illegal.

Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the Court.

Sec. 2. Every person who shall monopolize, or combine, or conspire with any other person or persons to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the Court.

. . . . . .

Sec. 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the

subject thereof) mentioned in Section 1 of this Act, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 369.

JAMES G. TINSLEY, Appellant,

vs.

MORGAN TREAT, United States Marshal for the Eastern District of Virginia, et al., Appellee.

BRIEF FOR APPELLANT.

MARCELLUS GREEN,
GARNER WYNN GREEN,
Of Counsel for Appellant.

In the Supreme Court of the United States.

ON APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR EASTERN DISTRICT OF VIRGINIA.

No. 369.

JAMES G. TINSLEY, Appellant,

vs.

MORGAN TREAT, United States Marshal for the Eastern District of Virginia, EDMUND WADDILL, JR., Judge of the District Court of the United States for said District.

BRIEF FOR APPELLANT.

STATEMENT OF CASE.

The United States District Attorney for the Eastern District of Virginia filed before His Honor, Edmund Waddill, Jr., Judge of the said District Court, the affidavit of Morgan Treat, Marshal of said District under Sec. 1014 U. S. Rev. Stats., setting up that an indictment had been found in the Circuit Court of the United States for the Middle District of Tennessee on May 25, 1906, styled United States vs. Virginia-Carolina Chemical Company, et al., wherein James G. Tinsley was a defendant, and exhibiting therewith an exemplified copy of said indictment, and averring that the said James G.Tinsley was a resident of the said Eastern District of Virginia, and praying a writ of arrest for him for removal to Tennessee for trial upon said indictment. Judge Waddill, sitting as commissioner under said Section 1014, issued the writ of arrest; the arrest was made, and the defendant, James G. Tinsley, was brought before his Honor, Edmund Waddill, Jr., United States District Judge. Thereupon after reading the copy of the indictment in evidence by the Government, and the admission of said Tinsley of his identity with the person charged, the Government rested, and the defendant, Tinsley, offered himself and others as witnesses to prove that he was a citizen and resident of Virignia, and had

been for many years; that the alleged offenses were never committed in the State of Tennessee; and that he was never any party to any such offense committed in the State of Tennessee; and invoking the protection of Art. III., Sec. 2, Clause 3, and the Sixth Amendment of the Constitution of the United States.

Upon objection by the Government to any witness being sworn, or to any proof being allowed, on the ground that the exemplified copy of the Indictment, with proof of identity, was **conclusive** evidence of probable cause, and of the right to remove defendant for trial under said Sec. 1014, the District Judge sustained the objection, and refused to allow any witness to be sworn, or any proof to be made, and thereupon made the order of removal.

Thereupon application was made by the Government to his Honor, Edmund Waddill, Jr., sitting as District Judge, for a warrant of removal, and the appellant offered to make the same proof by the same witnesses upon that application; but upon objection by the Government for the same reasons, the District Judge refused to permit any witnesses to be sworn, or any proof to be made, and thereupon issued the warrant of removal.

Appellant being thus in custody of the appellee, Morgan Treat, United States Marshal, applied by petition to his Honor, Nathan Goff, Judge of the United States Circuit Court for the Eastern District of Virginia, for writs of **habeas corpus** and **certiorari,** and the writs were duly granted and returned. The petition averred the foregoing recited proceedings before Judge Waddill, and set up that appellant was a citizen and resident of the State of Virginia, and had been such citizen and resident for many years, and that said proceedings denied appellant the protection of said Art. III., Sec. 2, Clause 3, and of said Sixth Amendment, in holding that appellant was bound conclusively by the recitals of the indictment as evidence of the jurisdiction of the Circuit Court of the United States for the Middle District of Tennessee, to try the appellant for the alleged offenses, and of the fact that the alleged offenses were committed in Tennessee by appellant, and in refusing to permit any witnesses to be sworn or any proof to be made that appellant never committed the alleged offenses and was no party to said alleged conspiracy.

The petition avers (R. p. 10) "that the said supposed offenses in said indictment mentioned and charged were not, nor was any or either of them, committed in the said Middle District of Tennessee;

that none of the alleged acts, transactions, matters, or things, which are in said indictment mentioned or referred to as being or constituting the supposed engaging by this defendant in the said alleged conspiracies in the said indictment referred to, or any or either of them, were done or held or took place within the said Middle District of Tennessee, and no alleged act, transaction, matter or thing, in said indictment mentioned, or referred to as being the doing by this defendant or an act to effect the object of said conspiracy was done, held, or took place within the Middle District of Tennessee," and it specifically denies that the specific acts charged to have been done by appellant in Tennessee were committed by him in that State. (R. 10.) It further avers that the said indictment does not charge the commission by your petitioner of any offense against the laws of the United States, and that the same is insufficient and void. (R. 11.)

The return of Morgan Treat, U. S. Marshal, on the writ of **habeas corpus** does not controvert any of the allegations of the petition and merely set up and referred to the proceedings before Judge Waddill, Jr., as his authority for detaining appellant in custody. R. 64.

Upon the hearing of said petition for writs of **habeas corpus** and **certiorari**—the record having been duly certified to the Circuit Court—appellant offered to prove the averments of fact of said petition and exhibits, by witnesses then present, but his honor, Judge Goff, upon objection by the Government, held that said indictment, with proof of identity, was **conclusive evidence** of probable cause, and of the jurisdiction of the Circuit Court of the United States for the Middle District of Tennessee, and refused to permit any witness to be sworn, or any evidence to be adduced by appellant to prove the facts set forth in the petition and exhibits. The prayer of the petition was denied, and appellant was remanded to the custody of the Marshal, and, hence, this appeal.

BRIEF.

This appeal draws in review the following among other questions. Other counsel will further consider these and the other questions involved.

I.

The Indictment, R. 15.

(a) Charges no offense against the United States:

(b) Charges no offense against appellant committed in the Middle District of the State of Tennessee, or elsewhere:

(c) The joinder of the first, second, fourth and fifth counts of the indictment with the third and sixth counts thereof denies to appellants:

(a) The protection of the Fifth Amendment to the Federal Constitution, in that it subjects him, "for the same offense to be twice put in jeopardy of life or limb."

I.

The Indictment Does not Charge Any Offense.

This question is reviewable on this appeal.
Hyde v. Shine, 199 U. S. 62.

1. Counts one, two, four and five are framed expressly under Section One of the Sherman Anti-Trust Act, Sup. Rev. Stats., 1874–1891, 762.

2. Counts three and six are framed expressly under Section 5440, Rev. Stats.

First Count of Indictment, R. 15.

This Count avers an alleged violation of Section One of the Sherman Act.

Time.—It avers that the acts of engaging in the conspiracy were done from July 8, 1903, to September 1, 1905; (R. p. 15) but does **not aver that the conspiracy was being engaged in at the time of the finding of the indictment** in May, 1906.

Parties.—It has fifty-nine distinct defendants, thirty-one of which are corporations; of these, three are alleged to be of New Jersey, two of Illinois, one of North Carolina, three of South Carolina, eight of Georgia, one of Delaware, one of Kentucky, one of Great Britain, one of Florida, two of Mississippi, one of Louisiana, three of Alabama, one of West Virginia, one of Virginia, and two of Tennessee. Three of the defendants are alleged to be partnerships, and twenty-five are individuals, one of whom is appellant, without any averment of residence. There is no averment that any of the corporation defendants have any agents upon whom service of process may be had in Tennessee.

The Count avers that these several corporations and firms "before and on" July 8, 1903, and from then until and on September 1, 1905, (R. p. 15), **"did carry on business in the states of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee** hereinafter in this indictment called the states of the conspiracy as wholesale dealers in" fertilizers, which then were useful articles of merchandise, indispensable for use in raising of the crops "in the states of the conspiracy"; and that the individual defendants, (R. p. 16) severally averred **to be officers, or agents, or attorneys of twenty of the defendant corporations,** and several of them averred to be members of said partnerships **"in their several capacities as officers, managers, agents and attorneys of said corporation defendants and members of said firms and on behalf of those corporations and firms,** during the period of time of this indictment first aforesaid, **did carry on the business aforesaid."** (R. p. 16.) Appellant is made one of said individual defendants, to-wit: "James G. Tinsley, President of said Marietta Fertilizer Company," "and Vice President of said Tennessee Chemical Company." (R. p. 16.)

It avers (R. p. 17) that "in **so carrying on said business, trade and commerce,"** the defendant, the Virginia-Carolina Chemical Company, and individual defendants, Morgan, President; Whittle, Vice President; Dancy and Wilcox and Smith, Managers and Agents of Virginia-Carolina Chemical Company, made use of and operated a portion of their **"said business, trade and commerce"** through each of certain other corporations, to-wit: The American Fertilizer Company of Virginia, the Birmingham Fertilizer Company of Alabama, and three other named corporations, two of Georgia, and one of North Carolina, owning the whole or a majority of the stock of these corporations. That defendant corporation, Armour & Company, and Carpenter and McDowell, its Managers and Agents, the said Wilson, its Attorney and Agent, in **so carrying on the "said business, trade and commerce"** made use of and operated through another corporation called the Tuscarora Fertilizer Works. That a number of the other defendant named corporations and firms used other recited trade and corporate names for carrying on **"said business, trade and commerce."**

Place.—The places of business of defendant corporations or firms, or of the other corporations through which the said defendant corporations and firms carried on "said business,

trade and commerce," are not averred. The general averment is that defendant corporations and firms "did carry on business in" the specifically named states called "states of the conspiracy"; there is no averment that each of the defendants did not have places of business and do "business" in each of the said "states of the conspiracy," and have a legal domicile for the service of process upon them in such states.

It is averred that **"in so carrying on the said business** the said defendants x x x **did sell and deliver large quantities** of the said merchandise **within the limits of the states of the conspiracy from the respective places of business of said corporation defendants and the said firms located at different points within these states, to retail dealers and consumers of such merchandise in such states respectively,"** etc.

(1) **The legal effect of the count is to charge the corporation and not the individual with the crime.**

The charge is (R. 18) that "said corporation and individual defendants x x did x x engage in a conspiracy in restraint of the said business, trade and commerce, so then being carried on by them as aforesaid." The said business, trade, and commerce was that of the corporations and firms, and not that of said individuals. The averment is that said individuals carried on said business, trade and commerce for and on behalf of corporations and firms and in a representative capacity and not for themselves individually.

(2) The three specific acts of appellant alleged, after the general averments of the alleged conspiracy, to have been done in pursuance of the conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, are: (R. 20) First, that Samuel T. Morgan, Fortesque Whittle, Frank D. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred C. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Keesler, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, and T. Porter Fleming, on September 17, 1903, **in the city and state of New York,** "unlawfully did meet together to discuss and further the object of said unlawful conspiracy x x x they x x x when and where they so as aforesaid met together, each well knowing the character and purpose of said meeting, and that his said act was done in pursuance and to effect the object of said conspiracy and was an act on his part of engaging in the

same." Second (R. 28): That, "in pursuance of said unlawful conspiracy, and to effect the object of the same, and as an act on his part engaging in the same" on December 3, 1903, in said middle District of Tennessee, he "as Vice President of said Tennessee Chemical Company, unlawfully did sign his name with official designation, to-wit: 'James G. Tinsley, V. P.' to a certain check drawn by the said Tennessee Chemical Company upon the Bank of America, New York, for the payment of $6792 to the order of the said James G. Tinsley; x x x when and where he did as aforesaid sign his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of said unlawful conspiracy, and was an act on his part of engaging in the same."

Third (R. 34): That, in pursuance of said unlawful conspiracy and to effect the object of the same, and as an act on their parts, respectively, of engaging in the same, the said Frank Burbidge, appellant and six others, individual defendants x x x "at the city of New York x x x the city of Washington x x x Old Point Comfort and Hot Springs x x x St. Augustine x x x and French Lick Springs x x x unlawfully did, as officers, directors and attorney of the said Colonial Development Company, Limited, meet together **for the purpose** of discussing and attending to the officers of the said Colonial Development Company, Limited; they, the said Frank Burbidge," appellant and others, when and where they so met together as aforesaid well knowing the purpose of such meetings, and well knowing their acts in the premises to be acts in pursuance and to effect the object of the said unlawful conspiracy, and that the same were done as acts on their parts respectively of engaging in the said unlawful conspiracy."

These acts are predicated of a **then existing conspiracy,** not formed by appellant, nor by those who are averred to have met with him, but by the corporation defendants and firms in regard to the "said business, trade and commerce," so carried on by them. That in pursuance of this then existent conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same these acts were done. Being a charge of individually **engaging in a conspiracy already in existence,** the elements of **intent** and **knowledge** must be averred; and this conspiracy must be in restraint of interstate trade and commerce; and as the act averred is the act of engaging in the conspiracy, it must be in restraint of interstate commerce by sales

and delivery of said merchandise, at uniform and non-competitive prices, or shipping said merchandise in interstate commerce under an unlawful agreement so to do.

The second specified act was **official,** and is shown by the averment to be as "Vice President of said Tennessee Chemical Company." The last, as an officer of Colonial Development Company, a corporation not indicted, nor averred to have been a party to the conspiracy, nor engaged in interstate commerce.

The first act averred, the alleged unlawful conference in in New York, is controlled by the averments theretofore recited that the acts of the said individual defendants, including appellant, were in their several capacities as officers, agents, etc., in carrying on the business of the defendant corporations and firms on behalf thereof, and for said corporations and firms.

The acts averred, being **official** acts, the indictment does not charge any **individual** criminal intent. If this indictment were a declaration at law it would aver a corporate and not an individual liability of appellant. The gravamen being the unlawful restraint of trade, and the corporation defendants, and not the individuals,, being averred to be carrying on said business, trade and commerce, the criminal act and the criminal intent would be that of the corporation, and not that of **both** the corporations and their officers and agents. The Colonial Development Company is not indicted; nor is it averred to have been engaged in carrying on "said business, trade and commerce."

The statute does not provide that "every person" **and** corporation; nor every corporation, **its officers and agents,** who shall engage in, etc., but only in the **singular,** and specifically and severally.

In the absence of authority, or of a ratification of the agent's acts, a corporation could not be held civilly or criminally liable for the wilful, criminal acts of its agents, **New Orleans & North Eastern Railroad Co. v. Jopes,** 142 U. S. 27; **Lake Shore Ry. Co. v. Prentiss,** 147 U. S. 101–107–115; **Washington Gas Co. v. Lansden,** 172 U. S. 534–5–6; **U. S. v. Birch,** 1 Cranch C. C. 571; **U. S. v. Beatty,** Hemps. 482; **Somerset v. Hart,** 12 Q. B. Div. 360; **1 Clark & M. Private Corp.,** Sec. 249.

A corporation can only act through its agents; and, hence, if the criminal act done is that of the corporation, the same act cannot be, also, that of the individual. The act of the agent is essential to the creation of the offense by the corporation,

and the intent of the act, done in his representative capacity, is the intent of the corporation and not that of the individual. **1 Clark & M. Private Corp.** Sec. 238 (a), (b), (c); **Phil. & R. Co. v. Quigley,** 21 How. 202; **U. S. Deitrich,** (C. C.) 126 Fed. 664; **Chadwick v. U. S.,** 141 Fed. (C. C.) 236; **Speed v. Bank,** 22 Conn. 530; **Maynard v. Firemans Fund Ins. Co.,** 91 Am. Dec., 672; **So. Ex. Co. v. Platten,** 93 Fed. 936.

The criminal intent to conspire cannot be the common act and common intent of both a corporation and of the agent; for, if it is the criminal act and intent of the agent personally, it would not be the act of the corporation. **N. O. etc., R. R. Co. v. Jopes,** 142 U. S. 27, **supra; Latham v. R. R. Co.,** 72 Miss., 32; **Canton Co. v. Pool,** 78 Miss., 156; **Ritchie v. Waller,** 27 L. R. A. (Conn.) 161; **Rounds v. Railroad,** 64 N. Y., 136; **Com. v. Nichols,** 10 Met. 249.

Corporations are liable to indictment even where crime involves malice and evil intent. **1 Clark & M. Priv. Corp.,** Sec. 249; **State v. Passaic Co.,** 54 N. J. L. 200; **Tel. Newspaper Co. v. Com.,** 172 Mass. 274.

This separate responsibility of "every" corporation which engages in a conspiracy in restraint of trade is emphasized by Section 8 of the act, which declares that the word "person" or "persons" "wherever used in the act shall be deemed to include corporations and associations existing," etc. The gravamen being the restraint of trade, the acts of the corporation in trade, and not that of the persons composing or acting as agents for the corporation, are condemned. Stockholders of a corporation would not be indictable for the act of the corporation in engaging in a conspiracy in restraint of trade, and, yet, they, and not its officers or agents, are the real beneficiaries of the criminal act. There is no suggestion in the act for the criminal responsibility of **both** the corporation and the individual officers or agents of the corporation **for the same act.** Section 8 by using the language of substitution of "corporation" for "person" would make paragraph 2 of Section 1 read: "Every corporation who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty," etc.

(2) **The legal effect of the count is that there is no conspiracy in restraint of interstate commerce, nor of engaging therein averred.**

The averment is (R. p. 15) that the several corporations and firms **"did carry on business** in the states of North Carolina,"

etc. x x x "as wholesale dealers" in fertilizers, and that this "business" was carried on by the several officers, managers, etc., **on behalf of the corporations and firms;** "that in **so carrying on said business** the said defendants, that is to say, the said corporation and individual defendants" (not firms, although these firms are elsewhere throughout the indictment sought to be charged) (R. p. 16) "**did sell and deliver large quantities** of said merchandise **within the limits of the states of the conspiracy from the respective places of business of the said corporation defendants and the said firms, located at different points within these states, to retail dealers in and consumers of such merchandise, in such states respectively, and did also ship** large quantities of the same **from their respective places of business, located in the said states of the conspiracy; and also in the states of Virginia, Illinois, and Kentucky into and through other of the said states than those in which their said place of business were located;** and in **so carrying on said business and shipping** the said merchandise from one of said states into and through another or others thereof, the said defendants, during the period aforesaid, were **engaged in trade and commerce among the states of this Union within the meaning of the Act of Congress,** approved July 2d, 1890."

Analyzing this charge it is, that defendants "did carry on **business,"** and in so doing they **"did sell and deliver** large quantities **of said merchandise within the limits of the said states of the conspiracy from the respective places of business** x x x **located at different points within these states, to retail dealers in and consumers of such merchandise, in such states respectively."**

The specific averment as to carrying on "said business" is that of **selling** and **delivering** from their respective places of business **within the states** of the conspiracy "to retail dealers in and consumers" "**in such states respectively."** This avers **intra-state** and not interstate "business."

The word "business" has a broader signification than "trade". **Harris v. Amory,** L. R. 1. C. P., 154; **In Re Ala. R. Co.,** 9 Blatch 390; **Doe v. Bird,** 29 E. C. L., 57; **Doe v. Keeling,** 1 M. & S. 100; **Adams v. Boston R. Co.,** 1 Holmes (U. S.) 35.

The expression "did carry on business," as defined by these averments, is that of selling and delivering from its places of

business to retail dealers and consumers within these states.

The count continues by averring another and additional transaction, viz., **"and did also ship** large quantities of the same from their respective places of business located in the said states of the conspiracy; and also in the states of Virginia, Illinois and Kentucky, into and through other of the said states than those in which said places of business were located; and that in so carrying on said business and shipping the said merchandise from one of said states into and through another or others thereof, the said defendants x x x were engaged in trade and commerce among the states."

The selling and delivering **intra-state,** was the carrying on the "said business," and to this is added by the language **"and did also ship"** the additional and further averment, independent of the selling and delivering intra-state, viz.: Shipping in intra and interstate commerce. By the word **"also"** is meant "in like manner," "further," "in addition to," "too." **2 Am. & Eng. Enc. of Law,** 2d Ed. 177. This word **"also"** implies something in addition to what has gone before. **McCurdy v. Alpha Mining Co.,** 3 Nev. 37; **Dalton v. Bowker,** 8 Nev. 191; **Panton v. Teft,** 22 Ill., 367.

The word **"ship"** does not mean **to sell,** but to deliver to a carrier for transportation. **Webster's Dictionary; 25 Am. & Eng. Enc. Law,** 2d Ed. 851. It—ship—as the vehicle, is used by synecdoche for the act of transportation. To "ship large quantities of the same" does not convey the idea of **selling,** but only that the merchandise was delivered to a carrier for transportation from one point to another. The quoted paragraph separates the carrying on of the "said business **and** shipping" the said merchandise, and makes these acts separate one from the other, and charges that in so carrying on **"said business"** (selling and delivering intra-state) **"and"** "shipping," the defendants "were" (as a conclusion) "engaged in trade and commerce among the states." This distinction between carrying on the "said business" (selling and delivering), and that of "shipping" is preserved throughout the whole count, and uniformly, the words "said business, trade and commerce" are, conjunctively and without differentiation, used. This clearly appears in the averments (R. p. 18) that of the "**total volume of such business, trade and commerce,** then so being carried on by said defendants and their competitors, the said defendants together had controlled the principal part—that is to say, ninety

per cent. thereof"—thus, without differentiation between such "business," that is, selling and delivering intra-state, and shipping **intra** and **inter** state, in trade and commerce, the charge is made that, in the aggregate, the defendants—severally not by agreement—controlled the principal part. This appears (R. p. 18) further from, "and that because the said corporation defendants and the said firms were in fact separate and distinct from each other they should have conducted **their inter-state trade and commerce** strictly in competition with each other," omitting therefrom the word "business" when the **"inter-state trade and commerce"** is spoken of; and thus by this expression **"inter-state trade and commerce"** in contra-distinction to "said business, trade and commerce" the different ideas of "shipping" and "business" are expressed.

It is to be noted that the averment, supra, as to the amount of business controlled does not claim that there was a monopoly, or even an attempt to monopolize the trade.

And further (R. p. 18) and "then would have so conducted same" (inter-state trade and commerce) "but for the unlawful conspiracy in restraint of said business, trade and commerce in this indictment mentioned."

The preservation of the distinction between the carrying on of "said business" intra-state, and the "shipping" in intra and interstate commerce is necessary in the construction of this indictment, because the gist of the act charged, as being in restraint of "said business, trade and commerce" is the alleged making of "uniform and non-competitive prices," which can only apply to sales and not to shipping. Even though "intra-state" commerce be included in the unlawful conspiracy in restraint of trade among the states, it constitutes no violation of the Sherman Act. **U. S. v. Addystone Pipe Co.**, 85 Fed. supra; **U. S. v. E. C. Knight Co.**, 156 U. S., 1.

The indictment further charges as the gist of the conspiracy (R. p. 18) that "the said corporation and individual defendants" (not firms), "during the period aforesaid, at and within the said Middle District of Tennessee, in violation of the **provisions of said Section 1,** of said Act of Congress, **unlawfully did knowingly engage in a conspiracy in restraint of"** not trade or commerce among the states, but of **"the said business"** (intra-state) **"trade and commerce"** (intra and inter-state) **"so** then **being carried** on by them **in the manner aforesaid, whereby** the **said business, trade and commerce** was restrained **in the several ways**

and by the several means now here set forth and described—that is to say."

These averments do not charge an offense under section One of the Sherman Act.

(1) They do not, by proper words, aver: (a) Either the existence of a conspiracy; or (b) the engaging in a conspiracy; (c) it avers that the engaging in the conpsiracy was in the past and not that it was then being engaged in.

"In an indictment, nothing material shall be taken by intendment or implication. **Hawkins Pl. Cr. B.,** 2 Ch. 25. Sec. 60.

(a) (1) The statute does not define what a "conspiracy" is; nor does it define the offense of engaging in a conspiracy, so as to make a charge in the words of the statute sufficient, Where, as here, the offense at common law was not indictable, but is made so by statute, the statute must be strictly pursued. **1 Whar. Am. Cr. L.,** Sec. 371; **Com. v. Howie,** 15 Pick. 231.

"It may be necessary to describe the unlawful act where it has a specific name which indicates its criminality, yet, when the conspiracy has been to do an act prohibited by statute, the object which makes it unlawful can be described only by its particular features, and without being so, it cannot be shown that the confederates had an unlawful purpose." **Com. v. Barr,** 5 Barr (Pa.) 60; and see **Com. v. Eastman,** 1 Cush. (Mass.) 190; **State v. Mayberry,** 48 Me. 219; **State v. Parker,** 44 N. H. 83; **Lambert v. People,** 9 (Cow. N. Y.) 578; **Alderman v. People** 4 Mich., 414; **State v. Jones,** 13 Ia., 269. The conclusion **contra forma statuti** will not cure. **2 Hale Pl. Cr.,** 170; **1 Whar. Cr. L.,** Sec. 239.

An indictment for conspiracy which does not directly aver facts sufficient to constitute the offense, is not aided by matters which precede or follow the direct averments; nor by qualifying epithets as "unlawful," "deceitful," "pernicious," etc. **U. S. v. Goldberg,** 7 Biss., 175; **Re. v. Hewey,** 2 East P.C. 858; **State v. Norton,** 2 Zabr. 23; **U. S. v. Britton,** 108 U. S. 199.

The word "conspiracy" does not necessarily signify a criminal offense. **Philbroke v. Newman,** 85 Fed. 140; **Bitzer v. Washburn,** 121 Ia., 466; **McHenry v. Feran,** 56 Ia., 652.

Where the statute refers to a common law offense by its popular name, and imposes a penalty for its commission, it is insufficient to charge the offense in the statutory terms. **Com. v. Odlin,** 23 Pick, 275; **Sullivan v. State,** 67 Miss., 349, 0, 1; **State**

v. Abena, 3 Port. 397; **State v. Stedman,** 7 Id. 495; **U. S. v. Scott,** 4 Biss., 29; **U. S. v. Simmons,** 96 U. S. 360.

(2) If the words of the statute sufficed, no such language as "did knowingly engage in a conspiracy in restraint of the said business, trade and commerce" can be found therein; especially, where "said business, trade and commerce" had, by previous definition, been defined as embracing other than interstate commerce. The indictment proposes to recite the statute and any material variance is fatal. **1 Whar. Am. Cr. L.** Sec. 365; **Butler v. State,** 3 McCord 389.

(3) "Conspiracy is the corrupt" (**Ward v. State,** 47 N. J. L. 468) "agreeing together of two or more persons to do, by concerted action, something unlawful either as a means or an end." "Corrupt" "denotes an evil purpose." "Unlawful signifies x x contrary to any law, civil or criminal." "Agreeing together constitutes the sufficient act of wrong, no steps pursuant to the agreement being required." **1 Bishop New Cr. L.,** Sec. 171,2.

(4) "Unlawfully did knowingly engage in a conspiracy in restraint of said business, trade and commerce," is insufficient as an allegation of conspiracy, or of engaging in a conspiracy.

(a) It does not aver that the conspiracy was "corrupt"; (b) It does not aver that he had knowledge of the designs of the conspirators and intentionally participated in their scheme. **6 Am. & Eng. Enc. L.,** 2d Ed., 840, note. There must be an intentional participation in the transaction with the view to further the common design, and it must appear that defendant, with knowledge of the nature of the conspiracy, "knowingly and designedly assented to and united in the unlawful combination charged." **U. S. v. Goldberg,** 7 Biss., 175 supra.

(5) To aver conspiracy, it must aver that two or more **corruptly** combined and conspired together to do the act. **Ward v. State,** 47 N. J. L. 468, **supra.** The unlawful agreement is the gist of the offense of conspiracy. **Hyde v. Shine,** 199 U. S. 76, 77; **People v. Mather,** 4 Wend. N. Y., 220. Even under section 5440, Rev. Stat., the conspiracy is the offense and the overt act is no part thereof. **U. S. v. Britton,** 108 U. S., 192, 204. "It remains true that the combination of minds in an unlawful purpose is the foundation of the offense, and

that a party who did not join in the previous conspiracy, cannot under this section" (5440) "be convicted on the overt act." **U. S. v. Hirsch,** 100 U. S., 33,34; **Dealy v. U. S.,** 152 U. S. 546; **Bannon v. U. S.,** 156 U. S. 464.

It is not averred that there was any corrupt, or other agreement, between defendants to do what was done in the formation of the conspiracy; or, in fixing prices; or, in making the payments to the Colonial Development Company; or for allotment of material; or, in the terms of sale; or, in making use of the Colonial Development Company. It is averred that defendants did these **several** acts, but there is **no averment** that they were done by defendants, **by agreement,** much less corruptly combining and conspiring together to do them.

(6) The averment that said corporation and individual defendants "unlawfully did knowingly engage in a conspiracy in restraint of said business, trade and commerce x x x whereby the said business, trade and commerce was restrained in the several ways and by the several means now herein set forth," neither sufficiently sets forth a conspiracy in restraint of trade or commerce among the states, nor that the defendants engaged in such conspiracy.

The allegation purporting to be in restraint of trade is (R. p. 18) that competition as to prices at which "said merchandise" was "sold and delivered" "was prevented and destroyed by said defendants fixing and causing to be fixed, uniform and non-competitive prices, by them styled "current, reasonable, market prices," for the said merchandise so sold and delivered x x in those states, and the selling and delivering, and causing the sale and delivery of such merchandise in the said business, trade and commerce, at the prices so fixed and caused to be fixed."

This is insufficient: (a) No **agreement** as to prices is averred; (b) "Causing to be fixed" does not mean fixing by direct action. **Words and Phrases. Tit.** "Causing;" (c) Prices were applicable and confined to "merchandise" "sold and delivered" in **said "business, trade and commerce,"** and this was **intra-state** commerce. The specific averment of sale and delivery in said "business, trade and commerce," without any reference whatever to **shipments** among the states, or to any connection between shipments and said "uniform and non-competitive prices," excludes from consideration the aspect of "said business, trade and commerce" pertaining to shipments in interstate commerce.

To make this more emphatic the averment is "in restraint of the **said business, trade and commerce,** so then being carried on by them in the manner aforesaid," and which, as stated, **supra,** was in selling and delivering in intra-state commerce, and in shipping in intra and inter state commerce.

"Engaging in a conspiracy in restraint of trade" is not defined; nor is its effect as a restraint alleged, except that it is averred "**whereby** the said business, trade and commerce was restrained in the several ways and by the several means now here set forth and described that is to say." This is a mere conclusion, and not the averment of a fact. The several ways and means are not averred as restraining trade and commerce among the states, but are predicated of the alleged restraint of "said business, trade and commerce"; and none of these, either by its nature or by averment, has application to inter-state trade and commerce: on the contrary they apply only to the said intra-state business of sale and delivery of fertilizers.

The count (R. p. 18) avers that the several "ways" and "several means" by which "said business, trade and commerce" was restrained was **"competition as to prices** at which said merchandise **was sold and delivered** by the said corporation defendants and the said firms **in the said states** of the conspiracy which before x x x had existed between the said corporation defendants and the said firms respectively **in said business, trade and commerce,** and which as aforesaid should have continued to exist during the said period, was prevented and destroyed **by the said defendants** from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them styled "current, reasonable market prices," for the said merchandise so **sold and delivered** by the said corporation defendants and the said firms **in those states,** and selling and delivering, causing the sale and delivery of such merchandise **in said business, trade and commerce,** at the prices so fixed and caused to be fixed, which said uniform and non-competitive prices were prices greatly in excess of the prices which but for the said unlawful conspiracy would at such times have prevailed for the said merchandise in **said business, trade and commerce,** and were prices **therefore** unreasonable and were a tax on the people of the states of the said conspiracy amounting to a large sum of money, to-wit, Four Million Dollars, annually during the continuance of the same."

This allegation is insufficient: (a) The competition averred

was **in the prices** of merchandise **sold and delivered in the states of the conspiracy,** which as shown, **supra,** was intra-state commerce; (b) There is no averment that the prices were fixed, or caused to be fixed, **by any agreement of the defendants;** nor, that they were unlawfully fixed; nor that they were fixed by the defendants, corruptly combining and conspiring together. **Ward v. State,** 47 N. J. L. 461; **supra; 1 Bishop N. Cr. L.,** Secs. 171,2, **supra;** (c) There is no averment that there was any restraint in **shipping** the merchandise, nor that any merchandise was, in fact, shipped; and as shown, this shipping is the only act, which could be said to be an act having any relation to interstate commerce, averred in the count. (d) There is no averment that the alleged prices were required to be kept and enforced under any penalty whatever;

(e) The averment that "said uniform and non-competitive prices" were greatly in excess of the prices which but for said unlawful conspiracy would at such times have prevailed for the said merchandise in said trade and commerce is insufficient, because: (a) What prices had prevailed—at times in the past—is too indefinite and remote; and whether current market prices or not is not averred: and what prices "would have prevailed" is not the averment of the fact of an actual restraint of interstate commerce; (b) Prices have no relation to shipments of merchandise; (c) The averment that they are greater than "would have prevailed" is a conclusion and not the averment of a fact; (d) And were prices **"therefore** unreasonable" is a conclusion and not the averment of a fact; (e) There is no averment as to wherein the said alleged uniform and competitive prices were unreasonable; (f) It is not shown how said prices could be a tax, nor wherein the alleged, to-wit, Four Million Dollars, consisted; (g) There is no averment that these defendants had a monopoly of, or that they monopolized the trade in interstate commerce. In the absence of a monopoly, it is not perceived how prices fixed by one or more dealers in commercial fertilizers, unless the trade conditions sustained them as reasonable, could be in restraint of commerce, and especially not, where, as here, it is not averred that these prices were fixed by agreement.

This count (R. p. 18) further avers that "for and on account of such quantity of said merchandise so **sold and delivered,** as aforesaid," (intra-state business) "by any of such corporation defendants or of such firms in excess of amounts allotted and caused to be allotted to them respectively by said defendants,

the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess"(intra-state business)"was by the corporation defendants and firms so selling and delivering the same, paid into a common fund, held by the Colonial Development Company, Limited, hereinafter mentioned."

This is insufficient: (a) There is no averment of **any agreement,** corrupt, unlawful or otherwise, between the defendants to pay said sums; nor, for any allotment; nor by whom such alleged allotments were to be made, whether by the corporations, or firms or individuals, or by them or any of them, jointly or separately; (b) There is no averment of any joint, unlawful act charged; (c) The Colonial Development Company, Limited, is averred to be "a corporation organized under the laws of the Province of Ontario in the Dominion of Canada, and is not averred to have been organized by the defendants, nor to have been other than a lawfully organized existing and lawful corporation, acting within the scope of its charter powers and as a corporate body; (d) Such payments pertained only to intra-state business, and no connection with interstate business is averred.

It is further averred (R. p. 19) that from "which said fund" (one dollar and fifty cents and one dollar excess) "the said **Colonial Development Company, Limited," compensated** at the same rates per ton ammoniated and other fertilizers **such of said corporation defendants and firms as sold and delivered"** (intra-state business) "less than the amount so allotted to them respectively so it was not less than **seventy-five per centum** through and during the first year of the continuance of the said unlawful conspiracy and **ninety per centum** through and during the second year."

This is insufficient: (a) It is not averred that the Colonial Development Company was to make these payments **as compensation under any agreement,** unlawful or otherwise, by the defendants; and the payments were confined to the excess of allotments of fertilizers **"so sold and delivered in excess"** and which was, as shown, entirely intra-state business.

The count further (R. p. 19) avers "it being" (not an averment of fact; 57 Fed. 382; **Id.** 591, and 115 N. Y. 496) "a further element of the said unlawful conspiracy that each" (several act) "of the said corporation defendants and of the said firms also" (in addition to) "paid into the said fund" (to the Colonial

Development Company) "the sum of twenty cents for and in respect of each ton of **such merchandise** going to make up this said allotment, to be the **absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm, in disposing of** its said allotment in **carrying on the said business, trade and commerce,** on its part faithfully should exercise every reasonable effort and due business diligence to maintain the prices so fixed and caused to be fixed **as aforesaid** (for sales and deliveries in intra-state business) "and pay into the said fund the sums accruing to the same on account of its said excess sales," (in intra-state business) "in which case an equal amount was returned to the corporation defendant or firm so paying it into the said fund."

This is insufficient: (a) It is not averred that the said twenty cents **per ton** was to be **paid under any agreement** of the defendants; but the payment is averred to be the **several act** of each party to the Colonial Development Company, a third party, not averred to be a conspirator, or engaged in the conspiracy; and the **said sum** is to be the **absolute property of the Colonial Development Company,** unless **each** corporation or firm defendant, for itself, irrespective of the others, **fails** to comply **with the condition** upon which said twenty cents is paid.

The averment (R. p. 19) further is that "unless each of said corporation defendants and firms **in disposing** of its said allotment in carrying on the said business, trade and commerce."

"Dispose of" means more than to sell. **Phelps v. Harris,** 101 U. S. 380; **Hill v. Sumner,** 132 U. S. 123. It means "to part with" "passing from one's control." **Gould v. Head,** 41 Fed. 245. It does not mean **to ship in interstate commerce,** but merely to part with the ownership of; hence, it is not properly included in the difinition of the act of shipping in interstate commerce. If such had been the equivalent, it should have been averred to have been such act done in interstate commerce. The averment of "disposing of" its allotment, does not mean to sell and deliver at uniform and non-competitive prices, but has relation alone to the amount of merchandise such party has parted with the ownership of by any mode or manner whatever.

The count (R. p. 19) further avers "that the terms of sale of said merchandise by the several corporation defendants and said firms as to times of payment and discounts were also made uniform and non-competitive as between all of said corporation

defendants and the said firms in said business, trade and commerce, among the states of the conspiracy."

This is insufficient: (a) It is not averred that these terms of sale were fixed **by agreement;** (b) They are expressly alleged to have been made uniform and non-competitive "by the said **several** corporation defendants and the said firms"; (c) "Terms of sale" could only apply to goods sold and delivered, and these, under this count, include alone intra-state commerce; (d) "Terms of sale" bear no relation to shipment.

The count (R. p. 19) further avers "as a convenient intermediary and common agent between the said corporation defendants and the said firms, respectively and as a means of securing their co-operation in carrying out the said unlawful conspiracy, the **said defendants made use of** the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario in the Dominion of Canada; that is to say, the shares of the capital stock of Colonial Development Company, Limited, were apportioned among the said corporation defendants, and the said firms approximately upon the basis of their said allotments, and **such shares were sold to them by the said Colonial Development Company, Limited at the rate of ten dollars per share, and the monies accruing from such sale were held and used by the said Colonial Development Company, Limited, so as to further the objects of said unlawful conspiracy, and the said** Colonial Development Company, Limited, was also allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and other payments of twenty cents per ton as aforesaid."

This is insufficient: (a) It does not charge any restraint of interstate commerce; nor does it pertain to trade and commerce; (b) It does not charge that the Colonial Development Company was **by agreement** among the defendants made agent; it avers that the defendants made use of the company as a convenient intermediary and common agent, and as a means of securing their co-operation, but it does not aver that this use was made **by agreement,** corrupt or otherwise, among the defendants; a common agent may be, and by intendment is, unless the contrary was averred, created by the several acts of each person acting for himself, irrespective of the others. There is no averment that this common agent was **with knowledge and by design** made use of to further the objects of any conspiracy;

(c) The conclusion "and a convenient intermediary and common agent", and its use "as a means of securing co-operation," is defined by "that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were apportioned among the said corporation defendants, and the said firms approximately upon the basis of said allotments, and such shares were sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy."

This is insufficient: (a) There is no averment that all of the shares of stock of this Company were apportioned among the corporation defendants and firms; (b) Nor that any was apportioned **by agreement inter se;** but the distinct averment is that such shares were sold to said corporations and firms by the Colonial Development Company at ten dollars a share. Thus, the capital stock of the Colonial Development Company, or such shares thereof as were sold to these defendants, was sold by the Company, and the money arising therefrom was the money of the Company, as a corporation, and not that of the defendants, who were therefore, mere share-holders in the Development Company; (c) It is not averred that such sale of such shares was unlawful; or, that the sales were not the separate act of the Colonial Development Company in dealing, by its own separate officers, separately, with each defendant; or, that said shares, and their ownership, were in any way connected with any restraint of interstate commerce; or, that the defendants knowingly and designedly, and corruptly combined and confederated together and between themselves, by the creation or use, or agency, of said Company to do any act in restraint of interstate commerce; (d) There is no averment that appellant purchased, or was the owner of, or was in any way interested in the Colonial Development Company, or in its stock.

The averment that "the moneys accruing from such sales were held and used by the said Colonial Development Company, Limited, so as to further the object of said unlawful conspiracy, is an averment of a conclusion, and not of the facts. It is not averred that such was done by the Development Company **by agreement** of the defendants; nor, that defendants, and especially, not appellant, had any knowledge of, or participation

in such use by the corporation of the proceeds of sale of its stock for any such purpose.

The averment that the said Colonial Development Company, Limited, was, "also allowed and required to collect, hold, use and distribute the said funds arising from payments on account of excess sales and other payments of twenty cents **per ton** as aforesaid," is insufficient: (a) It is not shown **by whom** it was allowed and required to so do; (b) Nor that the same was done under **any agreement,** unlawful or otherwise, of these defendants. (c) The fund arising from payments on account of **excess sales** arose from **intra-state commerce,** and that from the payment of the twenty cents per ton was to be the "absolute property" of the Company, if the several parties severally and separately, each acting for himself, did not comply with the condition upon which such payment was to be made by said Company. This was not averred to be a joint agreement of defendants, and especially, is no connection with it by appellant averred.

These are the averments of the first count of the indictment which undertake to set up the charge of a conspiracy in restraint of trade, and as constituting the offense, and which by subsequent averments, each of the defendants, by a separate specific act, is charged to have engaged in.

There is no averment in this count, or in the indictment, that the conspiracy was existent at the time of the finding of the indictment, nor that any act of any party was an act of engaging in a conspiracy existent at the finding of the indictment. Under the rule in **Peoria Gas Co. v. Peoria,** 200 U. S. 48, that "the punishment adheres to the offense and stops when the offense stops," and **Re. Franklin Tel. Co.,** 119 Mass., 447, it would be necessary to aver that the appellant was at the finding of the indictment engaged in the conspiracy.

It will be noted that each and every of the allegations of the indictment relied on as constituting the conspiracy have been acts done by the corporation defendants and firms, and no individual act of this defendant, or of any other individual is averred to have been done in the formation of the conspiracy, or to have heen done otherwise than in the matter of carrying on the business of the corporation for and on behalf of the corporation or firms.

Under paragraph one of Section one, of the Act, up to this

point, in the count, the pleader endeavors to aver a conspiracy in restraint of trade and commerce, and by the said several ways and means set forth. These allegations, as shown, do not charge in proper form, any conspiracy in restraint of trade and commerce among the states. The pleader, however, takes it for granted that this count of the indictment has duly charged the conspiracy, and he then proceeds in conformity to the second paragraph of Section one to aver that each of defendants, by specific act, engaged in it, and by separate paragraphs, some alleged specific act of each person or corporation defendant, as the ways and means, is alleged, was done "in pursuance of the said unlawful conspiracy, and to effect the object of the same **and as an act on its part of engaging in the same."**

SPECIFICATIONS OF ACTS OF ENGAGING IN THE CONSPIRACY.

The averment of each of these alleged acts specific is insufficient.

Each defendant is charged to have done an act, prior to September 1, 1905, "in pursuance of said alleged conspiracy and to effect the object of the same and as an act on its (his) part of engaging in the same. That is **each had engaged in the conspiracy after it was formed.**

These specific acts are the "several ways" and "means" by which these several defendants did each "engage in" such conspiracy. The general precedent allegations as to what defendants, generally, did is controlled by these specific acts, which are averred to be the several acts of each, whereby each committed the offense of engaging in the conspiracy. If a party pleading uses a generic term, comprising, therefore, many species or particulars, and afterward uses an averment, defining what particular or species of the number be insisted on, he is tied up to that particular one. **Stukely v. Butler.** Hob. 172; **Dakins Case,** 3 Saunders 290. note a; 3 Term Rep. 307; 2 **M. & B.,** 279; Com. Dig. Pleader, C 22; **Bishops Cr. Pro. 406; Sullivan v. State,** 67 Miss., 353, 4, 5.

Such specific act is averred to be the commission of the crime, and each act, as to each person or corporation, must be shown by averment to be, in itself, such an act, done, with criminal intent, with knowledge of the nature of the conspiracy, and to become a party to its execution. **U. S. v. Goldberg,** 7 Biss., 175; **supra,** and, as would, if in a separate indictment against each severally,charge, by proper words, guilt of the offense,

"The verdict of a jury does nothing more than verify the facts charged; and if these do not show the party guilty, he cannot be considered as having violated the statute." Shaw. C. J., in **Cone v. Odlin,** 23 Pink, 275.

To avoid undue prolixity, each of these several specifications may be summarized thus:

(a) It does not aver that the defendant charged thereby was any party to the original agreement of conspiracy; nor that the conspiracy was then existent;

(b) No unlawful conspiracy had been averred;

(c) No knowledge of the nature of the conspiracy is averred when such party did the acts of engaging in it; nor is there any averment that with knowledge of the conspiracy, and of its purpose such defendant intentionally and designedly assented to and united in the unlawful conspiracy charged. **U. S. v. Goldberg,** 7 Biss., 175. The averment of "well knowing that the same was in pursuance," etc., in Specifications (R. pp. 20, 21, 23, 25, 27, 28, 29, 30, 31, 32, 34 and 35), is merely a conclusion, and is not an averment that such party had knowledge of the nature of the conspiracy, and with such knowledge designedly assented to and united in it.

(d) The Specifications on R. pp. 19, 20, 21, 23, 24, 25, 26, 27 aver separate, past acts of "engaging in" outside of Tennessee. **Reg. v. Boutton,** 12 Cox. 88; **U. S. v. Newton,** 52 U. S., 275; **U. S. v. Britton,** 108 U. S., 205; **Hyde v. Shine,** 199 U. S., 62. And those averred to have been done inside of Tennessee were not acts done in interstate commerce.

(e) The acts averred do not constitute acts done in interstate commerce, and especially, not in restraint of interstate commerce.

(f) The acts done are not averred to have had any connection with a sale and delivery of fertilizers; nor with any such sale at uniform and non-competitive prices; nor with any shipment in interstate commerce; nor with any competition in prices, or sales, for such shipment in interstate commerce, The only specification which refers to prices is the second paragraph on page 21, and this as shown, **infra,** is insufficient.

(g) There is no averment that any of the said acts purporting to have been done by said corporations in engaging

in said conspiracy were authorized by the said corporations to be done for it. There is no presumption from the act itself of authority of a corporation for engaging in crime. There is no averment that any of said officers, acting for said corporations, had any authority from it to commit this crime for it.

(h) The authority of the alleged **agents** to do the alleged acts is not averred; and without such averment of authority the principal is not bound for his criminal act.

(i) A single act, and especially one which did not show on its face an unreasonable restraint on interstate commerce, could not constitute the act of engaging in the carrying out of a conspiracy in restraint of interstate trade.

(j) These several acts specified against the several persons could not properly be joined as counts in an indictment; nor could each of the offenses charged be tried, under the Constitution, at other place than the State and District where it was committed.

(k) There is no averment that the conspiracy which had been formed, and in which said several defendants had engaged by the several acts averred, was in existence at the time of finding of the indictment, but it clearly appears to the contrary.

The only specification (R. 21) referring even remotely to the matter of prices is that in pursuance of said unlawful conspiracy and to effect the object of the same, and as an act on his part in engaging in the same, "the said Frank E. Wilcox x x x at and within the City of Norfolk x x x unlawfully did deliver to one W. W. Perkins, Secretary of the said American Fertilizer Company, a certain document, too voluminous to be here set forth, stating certain prices and terms of sale, fixed in pursuance of the said unlawful conspiracy, for the said fertilizer merchandise, in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, and Tennessee, for the spring season of the year nineteen hundred and four; he, the said Frank E. Wilcox, at the time and place when and where he so aforesaid delivered the said document to the said W. W. Perkins, well knowing the character of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same."

This is insufficient:

(a) The act was an official act of Wilcox, averred to have been manager and agent of the Virginia-Carolina Chemical Company, dealing with the Secretary of one of its subsidiary companies, the American Fertilizer Company (R. 17); (b) The alleged act was outside of Tennessee; (c) The alleged delivery of the document, stating certain prices and terms of sale, fixed in pursuance of the said unlawful conspiracy, for said fertlizer in the states of North Carolina, South Carolina, Georgia, Florida, Alabama and Tennessee, shows:

(a) The delivery of a list of prices between the principal and agent; (b) It does not aver that the prices were fixed by agreement with defendants; nor by whom they were fixed; (c) The prices were for fertilizer in North Carolina, South Carolina, Georgia, Florida, Alabama and Tennessee, without averment that there was any sale or delivery, or shipment in interstate commerce; (d) The prices averred as being fixed in the states named are not the prices alleged to have been fixed in the states of the conspiracy, namely, North Carolina, South Carolina, Georgia, Florida, Mississippi, Louisiana, Arkansas and Tennessee (R. 15, 16); (e) There is no averment of prices for sale, or shipment in interstate commerce; (f) The delivery of a document stating prices and terms of sale could constitute no offense without the averment that the same was made effective in restraint of interstate commerce by sales made thereunder; (g) There is no averment that appellant, or any other defendant, save Wilcox, had any knowledge of, or in any way was a party to the said act of said Wilcox.

(1) There are three particular specifications against this appellant on R. pp. 20, 28 and 34, of acts charged as having been done "in pursuance of the said unlawful conspiracy, and to effect the object of the same." The first, R. p. 20, is, that appellant, with Samuel T. Morgan and eighteen other named persons, on Sept. 17, 1903, in New York, "unlawfully did meet together to discuss and further the objects of said unlawful conspiracy, they" (meaning each party) "when and where they so aforesaid met together, each well knowing the character and purpose of said meeting, and that his said act was done in pursuance and to effect the object of said conspiracy and as act on his part of engaging in the same"; and that on page 34 where meetings of appellant and seven others, outside of Tennessee, as officers, directors and attorney of Colonial Development Company, for the purpose of discussing and attending to the affairs of said company,

is averred.

These are insufficient:

(a) For each of the reasons, (a) to (k), inclusive, supra.

(b) No **act** was averred to have been done pertaining to such conspiracy; the meeting was held **to** discuss and **to** further the objects of the conspiracy; and for the purpose of discussing and attending to the affairs of the Colonial Development, respectively, but no act is averred as having been done at the meeting, and especially, none in the execution of the alleged conspiracy. **Non constat** these meetings did or said anything, or that appellant agreed to what was done or said.

Attendance at a meeting "to discuss and further the objects of the said unlawful conspiracy"; or "for the purpose of discussing and attending to the affairs of Colonial Development Company," not even averred to have been a party to the conspiracy, would not be an engaging in a conspiracy in restraint of interstate commerce.

(c) This engaging in, if committed, was done in the State of New York, and the other states named, and appellant could not be indicted in Tennessee therefor.

(d) The said specification contains no averment of any offense.

(e) That appellant "well knew the character and purpose of said meeting, and that the meeting was in pursuance and to effect the object of the said conspiracy," cannot avail to supply the want of an averment that each had knowledge of the nature of the conspiracy, and that the meeting did some act in restraint of interstate commerce; and, especially, when the alleged conspiracy pertained to said business (intra state) trade and commerce (intra and inter state), and it is not averred as to which of these was the object of the meeting.

(f) There is no averment that appellant was ever in Tennessee.

(g) The averment is that the acts were done as officers and directors of Colonial Development Company and, hence, not the individual acts of the parties.

(h) There is no averment that the alleged conspiracy in restraint of trade was in existence at the time of the finding of the indictment.

The second specification against appellant (R. p. 28), is, that "in pursuance of said unlawful conspiracy, and to effect the object

of the same, and as an act on his part of engaging in the same," on Dec. 3rd, 1903, in the Middle District of Tennessee, appellant "as Vice-President of the said Tennessee Chemical Company" (one of the corporation defendants of which appellant is averred to be the Vice-President, and for which appellant "in their (his) several capacities as officers x x x of the said corporation defendants x x x and on behalf of these corporations x x did carry on the business aforesaid." (R. 16), "unlawfully did sign his name **with his official** designation, to-wit: 'James G. Tinsley, V. P.,' to a certain check of said date drawn by the said Tennessee Chemical Company upon the Bank of America, New York, for the payment of $6,792 to the order of the said James G. Tinsley; he x x x at the time and place, when and where, he so aforesaid signed his name to said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part engaging in the same."

This is insufficient to charge any offense, and, especially, against appellant, because:

(a) For the reasons set forth (a) to (k), **supra.**

(b) The act averred was the act of the corporation, Tennessee Chemical Company, and not that of the appellant individually, and for which the corporation, if any one, and not both can be indicted; (c) Said act was no part of the conspiracy averred; (d) It charges no offense; (e) The averment that he "well knowing the contents of the same" (check) "and that his act was done in pursuance and to effect the object of the conspiracy, and as an act on his part of engaging in the same," does not satisfy the requirement that he, individually, with knowledge of the conspiracy and of its object, intentionally and designedly assented to and united in the said unlawful conspiracy charged by said act.

Wherefore, each of said several specifications is insufficient to charge any offense.

This count appears to have been framed upon precedents applicable to Section 5440, Rev. Stats. in that, these several specifications are treated as overt acts, and which, if done in pursuance of and to give effect to the conspiracy, would show that the overt act of that statute had been committed, and the conspiracy had been made effective, and without showing how such act would tend to effect the object, or that the object was actually effected. **U. S. v. Benson,** 70 Fed. (C. C), 591; **Baumon v. U. S.,**

156 U. S., 464. The Sherman Act has no such statutory evidential factor as the overt act. The charge that a defendant "engaged in" a conspiracy in restraint of interstate commerce must be accompanied by the averment of the facts which evidence such guilt. These acts cannot be of the colorless character of those under Section 5440, but must, as they constitute the offense itself, be accompanied with proper averments of criminal intent, and be of such nature as to show guilt on the face of the indictment.

Wherefore, this Count charges no offense against the United States by this appellant.

SECOND COUNT.

This Count Charges no Offense Against the United States.

This second count (R. 35) charges an alleged violation of Section 1 of the Sherman Act, and this second count contains, by averment or adoption, the allegations of First Count, except as follows: that "the several corporations and individual defendants and the said firms named in the first count of this indictment **in the places and in the manner and under the circumstances in that count set forth did carry on the said business, trade and commerce among the states** of the Union, within the meaning of the Act of Congress," etc. **That said corporation and individual defendants** and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section One of the said Act of Congress, **unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the grand jurors unknown, and engage in a conspiracy among themselves,** and with such other unknown corporations, and persons, **in restraint of the said business, trade and commerce, so then being carried on by them in the manner aforesaid,** which said unlawful conspiracy in this count mentioned, then and there **was a conspiracy for restraining the said business, trade and commerce** in the several ways and by the several means now here set forth and described; that is to say."

This paragraph of the count is insufficient:

(a) The said "business, trade and commerce" are the same as in the first count, and that count shows the "said business" to be intra-state, and the said trade and commerce to be to ship intra and inter-state commerce; and hence the count affirm-

atively shows no charge of a conspiracy or of engaging in restraint of interstate commerce.

(b) The charge is not within the purview of Section One. That said corporation and individual defendants **"unlawfully did knowingly and wickedly conspire together** and with others unknown" **and engage in a conspiracy among themselves** and with such other unknown conspirators and persons, would not contravene the statute.

(a) The statute does not use the words "did conspire together."

(b) **"And engage in a conspiracy among themselves"** is an effort to charge the offense created by the words of the statute; but there is no such offense as "did conspire together and did engage in a conspiracy" defined by the statute. Under the cases, **supra,** as to the proper averments of statutory crimes, these averments are bad.

(c) That they "unlawfully did knowingly and wickedly conspire together x x x and engage in a conspiracy among themselves," is insufficient.

(d) It does not even charge the conspiracy in the language of the statute, which itself would be bad. Cases **supra.**

(e) It does not even aver that the conspiracy was corrupt. **1 Bishop, New Cr. L.,** Sec. 171, 2, 3, **supra.**

(f) Borrowing the phraseology of Section 5440, it avers that the parties "did conspire together." This was held by a majority opinion (**Wright v. U. S.,** 108 F. 803), to be sufficient under Section 5440, because **in the language of that act;** but no such language occurs in the Sherman Act. **Wilder v. U. S.,** 143 Fed., 433, 6, 7, under Section 5440, avers that it was "unlawfully, knowingly, corruptly, fraudently and feloniously combined and confederated and agreed by and between," etc., as to the proper averment for conspiracy under that Act.

(g) **"And engage in** a conspiracy among themselves" does not aver "unlawfully and knowingly" except impliedly. This averment does not in proper form, aver a violation of Section One for the reasons stated **supra** to it in considering the first count.

(h) The "said unlawful conspiracy in this count mentioned

x x x then and there, **was a conspiracy** for **restraining the said business, trade, and commerce.**" This avers the object of the conspiracy, but does not aver that this object was put into execution or effect.

The rule is that the conspiracy must be in unreasonable restraint of commerce—an actual result. An academic agreement "for restraining," if not made effective by execution, is not within the act. It is emphasized by **Peoria Gas Co. v. Peoria,** 200 U. S., 48, **supra,** where the rule of public policy was declared, **Cessante causa cessat effectus."**

(i) For restraining of "said business, trade and commerce", as shown **supra** combined the elements of intra-state and inter-state commerce, without separation, and this would be bad. It does not inform the defendant of the nature of the accusation against him.

"In the several ways and the several means now here set forth and described" this alleged conspiracy for restraining said business, trade, and commerce was evidenced. The averment follows, as in the first count, as to "competition as to the prices at which the said fertilizer was to be sold and delivered" (intra-state) "by the said corporation defendants and the said firms in the states of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas, and Tennessee aforesaid, which x x x had existed between said corporation defendants and said firms respectively, in the said business, trade and commerce, and which should have continued to exist during the said period was to be prevented and destroyed the said defendants from time to time fixing and causing to be fixed uniform and non-competitive prices x x x for the said merchandise **so to be sold and delivered** x x x in the states last named, and **selling and delivering** and causing the **sale and delivery of** such merchandise in the said business, trade and commerce, at the prices so to be fixed; which uniform and non-competitive prices **were to be prices** greatly in excess of the prices which but for said unlawful conspiracy last aforesaid would at such times prevail x x x and **were to be prices** therefore unreasonable."

This is insufficient:

(a) For the reasons stated to like language in the first count, **supra:**

(b) The competition in prices was to be for sale and delivery in intra-state commerce.

(c) These prices were **to be** fixed—but there is no averment of this act ever having been done. A promissory agreement to fix prices in the future which are never fixed, cannot have effect to actually and unreasonably restrain trade or competition in prices.

(d) There is no averment that there was ever any sale and delivery at any price:

(e) There is no averment of the prices that actually prevailed; or of their increase by reason of the illegal conspiracy; prices which "prevailed" would not mean current, market prices.

(f) There is no averment of any agreement between defendants to fix; or of any joint act of fixing prices; the averment is satisfied by the several acts of each defendant for himself, irrespective of his relation to his competitors.

(g) The several acts of the several defendants set forth in the first count, as acts on their part engaging in the said conspiracy, are adopted by reference (R. 37) in this count, and none of these acts show a sale and delivery of any merchandise;

(h) No reference whatever is made in this averment to shipment in interstate commerce or of any relation to prices in respect thereto.

(i) The identical acts could not constitute engaging in the two separate, distinct conspiracies averred in the first and second counts.

The next averment in this second count is in respect to "such quantity of said merchandise as should be sold and delivered as aforesaid by any one of such corporation defendants, or of such firms, in excess of amounts to be **allotted** and **caused to be allotted** to them, respectively, by the said defendants" "the sum of $1.50 for each ton x x x was by the said corporation defendants and firms so selling the same, to be paid into a common fund, to be held by the Colonial Development Company hereinafter mentioned; from which said Colonial Development Company x x x **was to compensate** at the same rates per ton x x x such of said corporation defendants as should sell and deliver less than the amounts so allotted to them respectively." The averment as to the payment of the twenty cents per ton is as in the first count, except that it is not averred that is was paid but "was also to pay."

These averments are insufficient:

(a) For the reasons set forth to like averments in the first count **supra.**

(b) There is no averment that any allotment was made; nor that any sales and deliveries were made; nor that any payments of the $1.50 or $1.00, or twenty cents per ton were made; nor, even any agreement between defendants so to do. The whole averment is **future** and promissory, without consummation or execution; and is confined to allotments for sales and delivery in intra-state commerce.

(c) The relations of each of defendants, corporations and firms, averred to Colonial Development Company, are several and individual, and not of concert or agreement.

(d) There is no relation whatever averred between the Colonial Development Company and this appellant; nor between the individual defendants; nor that any individual was any party to the transactions with that Company.

The averment (R. 37), as to the "terms of sale", and as to the status and agency of the Colonial Development Company are the same as those of the first count (R. 19–20), except that each avers what is **to be** and not what is or was.

This is insufficient:

(a) For the reasons stated to like averments on the first count. (b) There is no averment of the execution of the things that were "to be," and, hence, no restraint of commerce, for the reasons stated **supra.**

SPECIFICATIONS OF ACTS IN SECOND COUNT.

The count then proceeds (R. 37), to aver alleged specifications, thus: **"That each and all** of the acts set forth in the first count x x x as being acts by the said **several** corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, and as being acts on the part of said corporation and individual defendants respectively, engaging in that conspiracy, are now here in this count charged to be acts by the same corporation and individual defendants, committed at the same time and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defend-

ants as in that count specified, but to have been committed in pursuance and to affect the unlawful conspiracy in this count of this indictment mentioned, and to have been acts on the part of said corportaion and individual defendants respectively of engaging in the last named unlawful conspiracy."

This is insufficient:

(a) The several specifications set forth in the first count are averred to have been acts done in pursuance of and to effect and as engaging in another and different conspiracy. It is impossible that the intent and the act could be the intent and an act engaging in one conspiracy and at the same time be the intent and an act engaging in another and different conspiracy. The first count purported to aver an alleged conspiracy between defendant corporations and individuals, and by acts done in restraint of trade. This count purports to aver an alleged conspiracy between different persons, viz.: Defendant corporations and individuals and other persons, and of a different character, viz: For restraining trade by proposed acts to be done in the future, and which are not averred to have been done.

(b) These specifications are of acts alleged to have been done, but none of them were acts of selling and delivering; nor at uniform and non-competitive prices. They could not, by their very nature, be acts in pursuance of, or to effect, or as engaging in a conspiracy for selling and delivering at such uniform and non-competitive prices, in the absence of any averment that the proposal to fix prices **had been executed** and **that prices had been fixed.**

(c) Every act averred is averred to have been done in Tennessee, and there is no averment that the acts were done in interstate commerce; and the acts themselves do not show acts in interstate commerce.

(d) The specifications of acts done by this appellant: (a) The meeting in New York to discuss and further the object of the said conspiracy; and (b) of signing said bank check as Vice-President of the Tennessee Chemical Company; ;and (c) of meeting in New York and other places as officers and directors of Colonial Development Company for the purpose of discussing and attending to the affairs of said company, could have no relation to the alleged conspiracy in the second count for the reasons stated **supra.**

(e) For the reasons set forth to these several specifications in considering the first count **supra.**

Wherefore, this count charges no offense against the United States by appellant.

THIRD COUNT.

THIS COUNT CHARGES NO OFFENSE AGAINST THE UNITED STATES.

It purports to charge a violation of Sec. 5440, U. S.. Rev. Stats., in that, defendants did conspire to commit an offense against the United States, viz.: The offense of engaging in a combination in restraint of said business, trade commerce.

"To conspire to conspire."

This draws in review Sec. 5440 in its relation to Section One of the Sherman Act.

The essential elements of intent and act under both statutes are the same. The overt act of Sec. 5440 would be acts done in execution of the conspiracy under the Sherman Act. Every step, from concept to execution, in the commission of the crime of a conspiracy to commit an offense against the United States by engaging in a conspiracy under the Sherman Act, and that of engaging in a conspiracy under the Sherman Act would be common. The same averments of fact as constituting the conspiracy are made, and the identical evidence, **uno flatu,** would prove both. Hence, there would be a merger.

This count and the sixth count, under Sec. 5440, could not be joined with the first, second, fourth and fifth counts charging the offense itself of engaging in a conspiracy in restraint of trade, because,

(a) To indict appellant for the offense itself of engaging in a conspiracy in restraint of trade, under Counts 1, 2, 4, and 5, under the Sherman Act, and under Section 5440, for conspiring to engage in a conspiracy under the Sherman Act, would be to violate the Fifth Amendment to the Federal Constitution; in that, it would subject appellant for the same offense to be twice put in jeopardy of life or limb.

In **U. S. v. Gardner,** 42 Fed. 831, on the question of merger, it is said: "The reason why a conviction cannot be had for the conspiracy to commit a felony, or for an attempt to

commit a felony, when it appears that the felony was actually committed, is that an acquittal for the minor offense would not bar a subsequent indictment for the major, and consequently the accused might be put twice in jeopardy for acts which were all constituent parts of one offense. On the other hand, a conspiracy to commit an offense of the same grade does not merge in the consummated offense, and upon an indictment for the offense which was the object of the conspiracy, the accused can plead a conviction or acquittal upon the indictment for the conspiracy, and the plea would be a good bar."

In **State v. Setter,** 14 Am. St. Rep. 125, it was said:

"The principles upon which the doctrine of merger rests are, that the offense merged is lesser than the one in which it is merged, and that the ingredients of the smaller one are so identical with the ingredients of the larger that when both have been committed, they cannot in reason and justice be separated; so that to punish an accused in such a case for both offenses would be in effect to punish the same act twice."

"It is supposed that a conspiracy to commit a crime is merged in the crime when the conspiracy is executed. This may be so where the crime is of a higher grade and the object of the conspiracy is fully accomplished." **People v. Mather,** 4 Wend., 265, 21 Am. Dec., 122.

"If, therefore, on the trial of a misdemeanor, it appears that the same acts involve a felony, the proceedings will be arrested; otherwise the conviction and judgment on the lesser offense may be pleaded in bar of a prosecution for a higher crime." **Johnson v. State,** 29 N. J. L., 312, 324.

In **Cline v. U. S.,** 159 U. S. 596, it was held, that under Sec. 5440 an indictment would lie for conspiring to obstruct the mails—a different offense from conspiring—even though followed by a more severe penalty than the crime of obstructing itself; but the Court expressly pretermitted deciding whether the commission of the offense merged the conspiracy to commit it.

In none of the cases found by us is there any support for this joinder. There are a number of Federal cases holding that, even though Sec. 5440 is held to create an infamous crime, it is proper to indict for a conspiracy to commit an offense against the United States; but none in our research holding that where the offense itself has been committed, that the conspiracy to

commit and the offense itself can both be punished and both be joined in one indictment. The latest case on this proposition is **U. S. v. New York Cen. R. Co.,** 146 Fed., 298, and it holds that an indictment would not lie for **both** the conspiracy and the offense.

The test of being put twice in jeopardy is stated in **Sutherland's Notes on U. S. Const.,** 635, citing **Berkovitch v. U. S.,** 83 Fed., 452, and other cases, to be: "Unless the first indictment were such as the prisoner might have been convicted upon the proof of the facts contained in the second indictment an acquittal on the first indictment can be no bar to the second." Nor can an offense be split up into several parts. **Id.** 637.

The identical facts are averred, and would be in evidence to support each of these counts, and to punish under each would be to subject appellant to be punished twice for the same acts as constituting both offenses.

(b) If the legal judgment on each count would be materially different, as in felony and misdemeanor, then the joinder of such counts would be bad, in error, or in arrest, **1 Whar. Am. Cr. L.,** Sec. 418. Sec. 5440 creates an infamous crime. **Mackin v. U. S.,** 117 U. S. 348. **In Wilder v. U. S.,** 143 Fed., 433, the indictment under Sec. 5440 charged the act to have been **feloniously done.** The Sherman Act creates a misdemeanor.

(c) If the agreement to do the act, with a colorless overt act, constitutes the elements of the offense under Sec. 5440, and the Sherman Act requires unreasonable restraint of commerce, the scope of the criminal elements of each is such that they are legally incompatable.

(d) If Section 5440 applies, then the Sherman Act was unnecessary in its criminal conspiracy features.

The averment of the gist of the offense is (R. 36) that defendants "unlawfully did knowingly and wickedly conspire together x x x to commit an offense," etc.

This is insufficient:

(a) It does not aver that the conspiracy was corrupt.

(b) Nor that it was done feloniously. **Mackin v. U. S.,** 117 U. S. 348; **Wilder v. U. S.,** 143 Fed. 433; **Wright v. U. S.,** 108 Fed. 813; Pardee, J. dissenting.

(c) The "said business, trade and commerce" were, as in the first count, intra-state as to business and intra and inter-state as to shipment.

The "several ways" and "means" by which this conspiracy was created are those averred in the second count, and thereby "competition as to prices at which the said merchandise **was to be sold and delivered"** x x x **"was to be** prevented and destroyed by the said defendants from time to time fixing and causing **to be** fixed uniform and non-competitive prices x x x for the said merchandise so **to be** sold x x x and at the prices **so to be fixed** and caused **to be fixed** x x x which were to be prices greatly in excess x x x and **were to be prices** therefore unreasonable."

This is insufficient:

(a) For the reasons set forth, **supra,** to like language in counts one and two.

(b) There is no averment that the prices that **were to be fixed were ever fixed;** and, hence, there could not have been an actual unreasonable restraint of commerce.

(c) The competition in sale and delivery was "in the states" —(R. 38) intra-state commerce. The prices were to be fixed for sales and deliveries in "said business, trade and commerce" and these were to be only in intra-state commerce.

The averments as to allotments and of the relations to the Colonial Development Company, and of the terms of sale, are the same as in the second count, and the same objections as there would obtain.

The count adopts the specific acts set forth in the first count (R. pp. 20–35), as being acts of the several defendants done "in pursuance of and to effect the object of the unlawful conspiracy in this count."

This is insufficient:

(a) For the reasons set forth to like language in counts one and two, **supra.**

(b) The same acts and the same intents could not have been done and had to effect these three separate, distinct conspiracies, two of which were misdemeanors, the other a felony. Such allegations are contradictory and on their face untrue.

(c) The overt act of the statute must be an act giving effect to the conspiracy, and every one of these specific acts bears no relation to the sale and delivery of fertilizers, at uniform non-competitive prices, in interstate commerce; or to competition therein. The averment that the were done in pursuance and to effect the object of the conspiracy is irreconcileable with the act itself which is averred, and which, on its face, shows that it was not an act done in interstate commerce. Where the specific act is not set forth, the general averment, under Sec. 5440, of the act being done in pursuance and to effect the object of the conspiracy, has been found unobjectionable, but where, as here, the act itself is set forth, and that act shows that it could not be an act in violation of the Sherman Act, then the specific averments must control.

For these reasons the Third and Sixth Counts are bad.

FOURTH COUNT.

After an effort to formulate the charge of an offense under the Sherman Act by counts one and two, and under Section 5440 by count three, the pleader catches "new wind", and proceeds to "try, try again," by rehashing the same elements in counts four, five and six. **Cui bono?**

The fourth count (R. p. 93) charges no offense:

(a) It recites that the "several corporations named as defendants in the first count were separate and distinct corporations, severally organized and existing under and authorized by the laws of the several states and of the foreign country therein named: that the several individuals named as defendants were "severally officers, managers, agents, and attorneys of the said corporation defendants, and members of the firms therein named in the said first count in connection with each of them respectively; that the said corporation defendants and the firms during said period carried on business in the states of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the states of the conspiracy, in their own names, and under and through the said corporate and trade names and through the other corporations named in the first count, x x x as wholesale dealers in articles of fertilizer merchandise in the manner and to the extent set forth in the said first count, and in so carrying on said **business, sold and furnished** large quantities of fertilizer merchandise **to**

merchants and consumers **located in the said states of the conspiracy** and **shipped** the same from their respective places of business located at different points in the said states of the conspiracy and the states of Virginia, Illinois and Kentucky, and **delivered** the same **at various points in said states of the conspiracy**; that in so carrying on said **business** said corporation defendants, subsidiary companies and firms **severally shipped** said merchandise **to** and **delivered the same at** such various points of delivery **by shipments and deliveries wholly within one and the same state, by shipments** from points in one state to and deliveries at points in another state, and by shipments and deliveries between points in the same state, but by way of and partly through another state, and **were severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the** several states of the United States, to-wit, among the said several states of the conspiracy and the said states of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2nd, 1890."

This is insufficient:

(a) It does not charge sales and deliveries of fertilizer in interstate commerce. Sales and deliveries at uniform and non-competitive prices being the gravamen of the subsequent charge of the count.

(b) It avers that defendants as wholesale dealers "sold and furnished x x x such fertilizers x x x to merchants and consumers located in the said states of the conspiracy." (a) This avers that the fertilizer was sold and furnished intra-state; (b) "furnished" does not mean a sale; it is a more comprehensive term and does not necessarily mean a sale. It does not mean a sale here because "sold and furnished" would express two distinct ideas. **So. Ex. Co. v. State,** 33 S. E., 638; **State v. Freeman,** 27 Vt., 520; **Enlow v. Keef,** 79 Pa. St., 490.

(c) The averment "and shipped the same from their respective places of business located at different points in the states of the conspiracy, and the states of Virginia, Illinois and Kentucky, and delivered the same at said points of said states of the conspiracy," does not aver that the identical goods **sold** were **shipped**. The goods "furnished" may be those shipped, and not those sold. The averment "and delivered the same at various points in the States of the conspiracy" does not mean a delivery in inter-state commerce; nor do all of the foregoing quotations

show that the sales and deliveries were in inter-state commerce. "That in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped said merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same state, by shipments from points in one state to and deliveries at points in another state, and by shipments and deliveries between points in the same states, but by way of and partly through another state," does not aver that the merchandise sold was shipped and delivered in interstate commerce. This averment of "shipments" and "deliveries" would imply "shipments" of goods "furnished"; "deliveries" of goods "sold." No inter-state sale and delivery is averred by this language. This is conclusively evidenced by the subsequent averments of the specific acts whereby the parties named engaged in the conspiracy (R. p. 44-7); all of which are in intra-state commerce.

The count further avers (R. p. 41): "that the said individual defendants x x x in their respective capacities as officers, managers, agents and attorneys of the said corporation defendants and members of said firms x x were engaged in carrying on the said aforesaid business, and the aforesaid local and interstate commerce for and on behalf of said corporations and firms, respectively."

This is insufficient:

(a) It charges the acts done to have been in a representative capacity; and, hence, appellant would not be individually liable to indictment therefor.

The count charges (R. p. 41) that "prior to the period aforesaid the said business **and** commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other," and that it would have been so carried on but for the unlawful conspiracy next and in this indictment mentioned.

It will be noted that "said business **and** commerce" is the "business and commerce" in the first count mentioned, namely, intra-state business of sale and delivery, and intra and inter state commerce by shipments. The count then charges (R. p. 41) that at "the County of Davidson in the said Middle District of Tennessee in violation of the provisions of said section one x x x the said corporation defendants named in the

said first count" (reciting them) "and the said individual defendants named in the first count" (reciting them) "unlawfully did knowingly and wickedly engage in a conspiracy in restraint of commerce among the several states, to-wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several states aforesaid, whereby the said commerce was restrained by the several means and in the several ways following, that is to say";

This is insufficient:

(a) For the reasons stated to like language in the first count, **supra**; (b) "In restraint of the aforesaid commerce" signifies the merchandise "furnished" as shown, **supra**; (c) The sales were in the "business".

The conspiracy here averred, followed by the averment that it was restrained by the several means and in the several ways following, is controlled by subsequent averments. **Sullivan v. State,** 67 Miss., 346, 353, 354, 355, and cases supra.

The count then avers (R. p. 42) that the conspiracy in restraint of the aforesaid commerce was restrained "by the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon the said fertilizer merchandise which were maintained and adhered to by the said corporation defendants, subsidiary companies and firms in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries in said fertilizer merchandise to merchants and agents buying and selling again at a profit and consumers at the various points of delivery in the said states of the conspiracy, which were prices greatly in excess of those that had prevailed in the said states of the conspiracy prior to the period of such unlawful conspiracy, and greatly in excess of those prices which would have otherwise prevailed in the said states during the periods of said unlawful conspiracy and were therefore unreasonable." (R. p. 42).

This is insufficient:

(a) It does not aver that the alleged uniform and non-competitive prices were fixed or caused to be fixed by any agreement, corrupt or otherwise, between defendants. (b) For the reasons set forth, **supra,** to the same language in Count one, **supra**; (c) It is not averred that such prices were maintained and adhered to by any agreement, corrupt or otherwise; (d) Uniform and non-competitive prices are not applicable to "sales and deliveries"

of fertilizer under the allegation that it was "sold and furnished"; (e) That the prices were maintained and adhered to by the defendants in carrying on the "aforesaid business" and local and inter-state commerce" comprehends by the use of the word "business," in addition to the "local and interstate commerce" averred **supra** an element undefined in the count; (f) The general averment that defendants maintained uniform and non-competitive prices in making sales and deliveries in the said states of the conspiracy in carrying on the aforesaid business and local and interstate commerce, does not show that there were any sales and deliveries in inter-state commerce at such prices; (g) The averment that the prices were greatly in excess of those that **had prevailed** prior to the period of such unlawful conspiracy is too indefinite. Whether one or ten years before; "prevailed" may mean merely at times. "Prevailed" does not signify current market prices.

The averment that they were greatly in excess of those that would have prevailed are conclusions of the pleader and not facts. The averment that they were "therefore unreasonable" is a conclusion.

The count then avers, as a ways and means of restraining commerce, "by the said defendants using and causing to be used the following plan and scheme in order to secure adherence to said uniform and non-competitive prices, whereby earnest money was given to secure maintenance of such prices, and compensation was to be made to those losing volume of business by reason of maintaining such prices; that is to say."

This is insufficient:

(a) It does not aver that there was any agreement, corrupt or otherwise, between defendants; (b) It does not aver that any earnest money, **inter se**, was given. As recited subsequently (R. p. 43) it appears that the alleged "earnest money" was paid to the Colonial Development Company "by each of defendant corporations and firms which faithfully maintained such uniform and non-competitive prices and failed to make sales and deliveries of such merchandise through itself and its subsidiary companies in the said states of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but sold and delivered through itself and subsidiary companies a minimum amount thereof required as a guarantee of good faith, received from such common fund, as compensation on account of such short sales,

the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid fell short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which x x made such sales and deliveries x x x in excess of its allotted percentage amount as aforesaid, as a penalty upon such excess sales, paid into such common fund like amounts per ton on the said respective kinds of fertilizers, divided in like ratio, upon the amount of such excess sales aforesaid";

"By using and causing to be used as a chief means whereby said unlawful conspiracy was effected, a corporation of Ontario, Canada, whose stock was apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was the common fund aforesaid into which was paid the earnest money and penalties on excess sales aforesaid, and from which was paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which the same was operated and directed."

This shows: (a) That there was **no agreement** between defendants as to the alleged allotment and payments; but that the same was made by and to the Colonial Development Company, a corporation lawfully organized; and not averred to have been in any way a party to the alleged unlawful conspiracy; (b) The allotment and payment were made in respect **to sales and deliveries** only, and these were intra-state commerce. There is is no averment that there was any allotment of inter-state commerce; nor any payment to the Colonial Development Company in respect thereto. There is no averment of any payment in respect to any shipment of fertilizers. The averment, is, that **each** of the defendants made these payments to the Colonial Development Company; and that the Colonial Development Company imposed the penalty on the excess sales; but these sales are not averred to have been in inter-state commerce.

It is not averred that the Colonial Development Company was **by agreement,** corrupt or otherwise, by the defendants used as an intermediary or common agent. The Colonial Development Company is averred to be a corporation of Ontario, Canada,

and these transactions are not averred to have been in the State of Tennessee; nor even in the United States. It is not averred that the alleged conspiracy was existent at the time of the finding of the indictments.

Treating these allegations as a sufficient averment of the conspiracy, the count proceeds to aver the specific acts of **some** of the defendants by which each engaged in it. It avers specific acts, viz.: that "the corporation defendants and individual defendants hereinafter named in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively x x and did do and perform such acts on their respective parts of engaging in the said unlawful conspiracy in this count of this indictment mentioned; and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that such act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, and as an act on the part of such defendant in engaging in the same, that is to say."

This is insufficient:

It avers the then existent conspiracy, and that the acts done were acts engaging in the same; (a) For the reasons stated, **supra,** to count one; (b) It does not aver that defendant had knowledge of its character, and did knowingly and designedly assent to and unite in the unlawful conspiracy charged by doing the said acts. **U. S. v. Goldberg,** 7 Biss., 175; **6 Am. & Eng. Enc. L.,** 2nd Ed., 840; (c) There is no averment of any corrupt agreement; (d) These averments are controlled by the specifications following, and these show no act done, or averred even to have been done, in interstate commerce.

The count then proceeds to enumerate twenty separate, independent acts of **some** of the defendants, **severally.** None of them save one (R. p. 45-6) being any act averred to have been done by this appellant; and each of said acts is averred to have been done in Tennessee. The act alleged to have been done by appellant is that of signing a check as Vice-President of Tennessee Chemical Company set forth in the first count, and insufficient for the reasons set forth **supra** to that specification in the first count.

None of said specifications (R. p. 44-47) are averred to have been a sale and delivery of fertilizer at uniform, non-competitive prices, or otherwise; nor of the shipment or furnishing of the same in interstate commerce. None of said specifications are sufficient, in themselves, to charge, in proper form, the offense of engaging in the conspiracy by the person or corporation charged.

The first four of said specifications (R. p. 44) charge that the Virginia-Carolina Chemical Company did the several acts in pursuance of said unlawful conspiracy and to effect the object of the same, and the first and third averring (through an agent whose authority is not averred) that said defendant, at Decherd, in the Middle District of Tennessee: (1) "unlawfully did knowing offer and agree to furnish and deliver to one J. L. Haynes, Jr., at Decherd, as aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;" (2) That it "unlawfully did knowingly cause to be delivered to the said J. L. Haynes, Jr., at Decherd, as aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise"; (3) That it did at Decherd by its agent, Watkins, "unlawfully did knowingly offer to furnish to the said Haynes seventy-five tons," etc.; (4) That it "unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd, aforesaid, x x x fifteen tons," etc.

These are insufficient:

(a) Each of these averments show a transaction in intrastate commerce; and could not support the charge of conspiracy, or of engaging in a conspiracy by the Virginia-Carolina Chemical Company, much less by appellant, in restraint of interstate commerce; (b) By apt words it does not charge the constituents of the offense under Section one. (c) It does not aver a sale and delivery at uniform non-competitive prices, by agreement, in interstate commerce, or otherwise.

The next three specifications (R. p. 44-45) charge that Armour & Company in pursuance of said unlawful conspiracy and to effect the object of the same, within Nashville, Tennessee, by one Alexander Leslie, its agent, "unlawfully, did knowingly deposit in the postoffice of the said United States, there, addressed, and to be sent and delivered by mail to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment," etc.

This is insufficient: (a) It does not show any authority in the agent; (b) It does not show a sale or delivery, at uniform, non-competitive prices in interstate commerce; (c) It does not show where the sale of the fertilizer was made. The notice (R.

p. 22) shows that it recites a shipment from Nashville, Tennessee, storage. It does not show that any fertilizers were either shipped in interstate commerce or otherwise.

The second specification against Armour & Company (R. p. 44) avers that at West Nashville, Tennessee, it "unlawfully did knowingly **deliver** to the Louisville & Nashville Railroad Company **for shipment** by rail to Corinth in the state of Mississippi, consigned to said Bramlitt Hardware Company in that state twenty tons," etc.

This is insufficient: (a) It avers a delivery "for shipment" and not the shipment itself; (b) It does not show that the fertilizer was delivered under any sale in inter-state commerce; nor at uniform and non-competitive prices; (c) It does not charge any offense under section one.

The third charge is that Armour & Company within West Nashville, "unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee."

This is insufficient: (a) It is the averment of a delivery for shipment in intra-state commerce; (b) "Consigned "and to be "shipped" does not aver a shipment; nor at uniform, non-competitive prices; nor in interstate commerce.

The next two specifications (R. p. 45) charge that the Federal Chemical Company, in pursuance of said unlawful conspiracy, and to effect the object of the same, (1) at West Nashville "unlawfully did knowingly **deliver to** the Louisville & Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned **and to be shipped** to one J. F. Walker, at Athens, in the State of Alabama," etc.

This is insufficient: (a) It does not aver a sale and delivery at uniform, non-competitive prices; (b) nor does it aver a shipment in interstate commerce, but only that the defendant **delivered** to the Railroad Company "consigned and **to be** shipped." **Non constat** the defendant was the shipper; or consignor; or that the merchandise was ever shipped. A mere delivery to a railroad "to be shipped" would not constitute a shipment in inter-state commerce.

The second specification charges that at West Nashville said Federal Chemical Company "unlawfully did knowingly **deliver** to the Nashville, Chattanooga & St. Louis Railway twenty tons

of the fertilizer merchandise aforesaid, **consigned and to be shipped** to the firm of Hendricks Brothers & McGovack, at Athens, in the State of Alabama," etc.

This is insufficient: (a) It does not aver any offense, for the reasons stated to the last specification.

The next three specifications (R. p. 45) are that the Furman Farm Improvement Company in pursuance of said unlawful conspiracy, and to effect the object of the same: (1) At Springfield, Tennessee, "unlawfully did knowingly **offer to furnish** x x x one hundred and forty tons," etc.

This is insufficient: (a) It is intra-state commerce; (b) It does not aver the offer at uniform, non-competitive prices or any other price; (c) It shows no sale or shipment in interstate commerce

(2) That it "unlawfully did knowingly **deliver** to the Nashville, Chattanooga & St. Louis Railway, fifteen tons, x x x **consigned and for shipment** through the said states of Alabama and Georgia to the said firm of Fiser, Orndorff & Williams, at Springfield, aforesaid, in the State and Middle District of Tennessee," etc.

This is insufficient: (a) It does not aver a sale and delivery at non-competitive prices, nor in interstate commerce; (b) It does not aver a shipment by defendant but only that it was delivered and consigned "for shipment"; **non constat** the defendant was the shipper, or that the merchandise was ever shipped;

(3) That defendant at Springfield, "unlawfully did knowingly cause to be delivered to the said firm x x x fifteen tons."

This is insufficient: (a) It does not show a sale and delivery at uniform, non-competitive prices; (b) nor in interstate commerce but in intra-state commerce.

The next specification (R. 45-6) is that appellant in pursuance of said unlawful conspiracy and to effect the object of the same within the County of Davidson, Tennessee, as Vice-President, of the Tennessee Chemical Company, unlawfully did sign his name with his official designation, "James G. Tinsley, V.-P.," to a certain check bearing said date drawn by said Tennessee Chemical Company upon the Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley, etc.

This is insufficient: (a) It shows that the act done was as an officer of the Tennessee Chemical Company, joined as defendant

in this count; (b) said act was not a sale and delivery of fertilizers; (c) It is not averred what relation it had to the alleged conspiracy; (d) Nor how it could be an act on the part either of said Tennessee Chemical Company or of appellant in engaging in said conspiracy; (e) The act averred is intra state, and no connection with inter state commerce is averred; (f) And for further reasons set forth, **supra,** to a like specification under the first count (R. p. 28).

The next specification (R. p. 46) is against the National Fertilizer Company: (1) that within Davidson County, Tennessee, it "unlawfully, did knowingly **deliver** to the Louisville & Nashville Railroad Company, **for shipment** by rail to Cullman, in the said State of Alabama, **consigned** to one T. B. Williams at that place, twenty tons of fertilizer merchandise," etc.

This is insufficient:

(a) To show a sale and delivery at uniform and non-competitive prices in interstate commerce; (b) or a shipment in inter state commerce; to "deliver" "for shipment" by rail to the railroad company is no averment of a shipment by the defendant for the reasons stated **supra.**

The next two specifications (R. p. 46) charge that William D. Rhea in pursuance of said unlawful conspiracy and to effect the object of the same: (1) within Davidson County, Tennessee, "unlawfully did direct and require E. W. Connell, treasurer of the said National Fertilizer Company to sign his, the said E. W. Connell's name as such treasurer to a certain check dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville, aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge," etc.

This is insufficient:

(a) It does not charge a sale or shipment or delivery of fertilizer; (b) It does not show any relation to the conspiracy charged, nor how it could be the engaging therein; (c) It shows an intra-state transaction; (d) It was the act of the corporation for which Rhea was acting;

(2) That said Rhea within the County of Davidson, Tennessee, "unlawfully did sign his name, to-wit: 'Wm. D. Rhea,' after the word 'approved' and above the word 'manager,' upon the face of a certain printed document too voluminous to be here

set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of fertilizer merchandise aforesaid," etc.

This is insufficient:

(a) This does not show any connection with inter-state commerce; (b) Nor a sale and delivery at uniform prices in interstate commerce, but is expressly intra-state commerce; (c) Said act averred would not be the act of William D. Rhea, but of the National Fertilizer Company.

The next two specifications (R. p. 46-7) charge that Abram C. Read (1) within the County of Davidson, Tennessee, "unlawfully did sign his name, to-wit: 'A. C. Read,' after the word 'approved' and above the word 'Manager' upon the face of a certain document, partly printed and partly written, too voluminous to be herein set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid," etc.

This is insufficient:

(a) The act was official; (b) It does not aver a sale and delivery at uniform and non-competitive prices, but an offer to furnish and deliver; (c) It does not aver that any act in consummation was done; (d) The act of offering was intra-state, and not an act in restraint of interstate commerce.

The second specification (R. p. 47) is that said Read "within the County of Davidson, in the said Middle District of Tennessee," "unlawfully did sign his name, to-wit: 'A. C. Read,' after the words 'Approved, Nashville, Tenn., Dec. 6, 1904,' and above the word, 'Manager,' upon the face of a certain other printed document x x x wherein and whereby the said Read Phosphate Company and the said Abram C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons of the fertilizer merchandise aforesaid," etc.

This is insufficient:

(a) To charge said Read, the act being official; (b) It does not show a sale or delivery at uniform and non-competitive prices;

(c) It does not show a sale in Tennessee in inter-state commerce; (d) It is a mere offer to sell without declaration as to the place where the sale was to be made, nor from whence the goods were to be delivered.

The next specification (R. p. 47) is that the Tennessee Chemical Company at Nashville "unlawfully did knowingly **deliver** to the Louisville & Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, **consigned and to be shipped** to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama," etc.

This is insufficient, for the reasons stated, **supra,** to the like charge against the Federal Chemical Company.

The next specification (R. p. 47) is that T. Garland Tinsley, at Nashville, Tennessee, "unlawfully did cause to be written and sent by mail to 'D. P. Haynes and Bro.,' at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment," etc.

This is insufficient:

(a) It does not charge an individual, but an official act; (b) The writing of said letter does not show any act in inter-state commerce, nor that the subject matter even pertained to fertilizers; (c) It shows an intra-state transaction; (d) It does not show any sale or delivery, at uniform, non-competitive prices; nor any shipment of fertilizer in inter state commerce.

The next specification (R. p. 47) against T. Garland Tinsley is that at Nashville, he "as attorney of the said James G.Tinsley, unlawfully did write an endorsement, to-wit: 'Pay to order of Colonial Development Co.,' on to-wit, a check of the same date drawn by the said Tennessee Chemical Company upon the Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley," etc.

This is insufficient:

(a) It does not show any act of T. Garland Tinsley, but purports to be his act as attorney; (b) Said act shows no connection with the alleged conspiracy; (c) There is no averment of any knowledge of the object of the conspiracy; (d) No connection is shown between said act and the alleged conspiracy to restrain competition in prices in sales and deliveries of fertilizers in inter-

state commerce.

These several specifications charging the several, separate acts of a part of these defendants are insufficient in themselves as charging an offense against the person or corporation specified, and especially as against the other defendants. As specifications, each paragraph must, as if a separate count in the indictment, be sufficient, in itself to charge the offense, and in this it wholly fails.

The general averment of the alleged conspiracy in averring that the defendants were engaged in local and interstate commerce in fertilizer in restraint of "said business, trade and commerce" when coupled with the above specifications of the acts done shows that it was wholly intra state commerce, and that this alleged conspiracy did not pertain to interstate commerce. The specific acts alleged as creating this crime against interstate commerce, clearly show that they were intrastate, and had no relation to interstate commerce; nor to sales and deliveries; nor to furnishing; nor to shipments of fertilizers at uniform, non-competitive prices therein.

FIFTH COUNT.

The fifth count is substantially the fourth count, the only change being that the alleged conspiracy was between the defendants named **and divers other corporations and persons to the grand jurors unknown,** and it recites the same specific acts as in the fourth count in support of this alleged conspiracy.

SIXTH COUNT.

This sixth count is substantially the third count, charging the violation of Section 5440, Rev. Stats., except that in the averment of the carrying on said business charged and set forth as recited in the first count and adopted in the third count, it avers that as wholesale dealers of fertilizer merchandise in so carrying on said business "they sold and furnished large quantities," etc., instead of selling and delivering.

The same acts, in the same language charged in the fourth count, are iterated in the sixth count as being acts done in pursuance of and to effect the object of the conspiracy under Sec. 5440, and to have been done in pursuance of and to effect the object of and as an act engaging in a conspiracy under Sec. 1 of the Sherman Act.

For the reasons set forth, **supra**, to the third count, and to the fourth count, and, which, to avoid prolixity, are not iterated, this count is bad.

For these reasons and those set forth in the briefs of associate counsel the judgment should be reversed and the appellant should be discharged.

Respectfully,

MARCELLUS GREEN,

GARNER WYNN GREEN,

OF COUNSEL FOR APPELLANT

FILE COPY.

FILED.
DEC 3 1906
JAMES H. McKENN

Supreme Court of the United States.

OCTOBER TERM, 1906.

No. 875.

GEORGE BRADEN, - - - - - - - Appellant,

vs.

MORGAN TREAT, UNITED STATES MARSHAL, IN AND FOR THE EASTERN DISTRICT OF VIRGINIA, ET AL., - - - - - - - Appellees.

BRIEF FOR APPELLANT.

JAMES P. HELM,
Counsel for George Braden

P. C. RUNNEMACHER PRESS, LOUISVILLE, KY.

Supreme Court of the United States.

OCTOBER TERM, 1906.

No. 375.

GEORGE BRADEN, - - - - - - - - - *Appellant,*

vs.

MORGAN TREAT, UNITED STATES MARSHAL IN AND FOR THE EASTERN DISTRICT OF VIRGINIA, ET AL., - - - - - - - - - *Appellees.*

BRIEF FOR APPELLANT.

I have read the carefully prepared and able brief of the general counsel for the appellant in these and associated cases. It leaves very little to be said, but I wish to specially urge one point, and that is, that in all cases like these, the question of the jurisdiction of the court finding the indictment, is and must of necessity also be open to inquiry.

The appellant in this case was arrested in Richmond, Virginia, under the authority of Section 1014, Revised Statutes of the United States, for the purpose of being carried to the Middle District of Tennessee, to be tried upon an indictment there found, on the 26th of May, 1906, alleging against the appellant and others a conspiracy under the Sherman Anti-Trust Act. He was brought before Judge Waddill, District Judge for the Eastern District of Virginia, sitting at Richmond. He offered to show by himself and others that he did not,

within the Middle District of Tennessee, on the date named in the indictment, to-wit, the 8th of July, 1903, or during the period between the 8th of July, 1903, and the 1st of September, 1905, or at any time, engage in the alleged conspiracies, or any of them, in the indictment mentioned, or at any time, or at any place, join in or assent to said alleged conspiracies, or any of them, alleged to have been engaged in, or entered upon, in the Middle District of Tennessee; or that he at any time or at any place did any act in furtherance of, or to effect the object of the alleged conspiracies engaged in in the Middle District of Tennessee, or any of said alleged acts or conspiracies. Thereupon the counsel for the Government objected to the appellant being sworn, or to any evidence on the subject, proving or tending to prove any of the acts which would defeat the jurisdiction of the court, or in any wise bear upon the question as to whether the appellant had ever been guilty of any of the conspiracies or acts, or consented to or approved any of the conspiracies or acts said to have been committed in the Middle District of Tennessee. The District Judge sustained the objection of the Government, and refused to allow the appellant to be sworn or to testify, or introduce others to testify to any of the facts before stated. The appellant admitted that he was the person named in the indictment. The Government thereupon contended, and the District Judge decided, that the identity being admitted, the indictment in due form being presented, was *conclusive* of *every fact* therein stated, including the necessary facts upon which *jurisdiction rested,* and held that the question of jurisdiction was not open to inquiry. Appellant then presented his petition to the Circuit Court, held by Judge Goff, for writs of habeas corpus

and certiorari. Both writs were granted and issued, and returns duly made. The petition exhibited a copy of the record of proceedings before the District Judge, and also stated the evidence which the appellant offered, and asked permission to give, but which he was not allowed to give, under the peremptory orders of the District Judge. The Circuit Judge also declined to hear any evidence, and held that the identity being admitted, the indictment was *conclusive* evidence of every fact therein stated, including the necessary facts upon which *jurisdiction* rested, and this appeal is prosecuted.

There are many questions of very great interest in this case, but I will confine myself to the discussion of one, viz., that both the District Judge and the Circuit Judge erred in holding that the indictment was *conclusive* evidence of *jurisdictional* facts. The Circuit Judge rested his opinion on the case of Beavers v. Henkel, 194 U. S. 73, but this court in that case did *not* hold that the indictment was *conclusive* evidence, but only *prima facie* evidence, and in discussing the question this court gave very strong reasons which can be urged in support of the justice of an inquiry, by the court in which the habeas corpus proceedings are pending, into the question whether the court in which the indictment was found had *jurisdiction* to find it. In that case it was contended by counsel for the prisoner that the indictment had no probative force at all, and as opposed to this, the Government contended it was conclusive of every fact therein stated, and this court in discussing that question said:

> "While the indictment is *prima facie* evidence, it is urged that there are substantial reasons why it should not be regarded as conclusive. An investi-

gation before the grand jury, it is said, is generally ex parte—although sometimes witnesses in behalf of the defendant are heard by it—and the conclusion of such *ex parte* inquiry ought not to preclude the defendant from every defense, even the one that he was never within the State or district in which the crime is charged to have been committed, or authorize the Government to summarily arrest him wherever he may be found, transport him perhaps far away from his home, and subject him among strangers to the difficulties and expense of making his defense. It is unnecessary to definitely determine this question."

And then this court adds:

> "It is sufficient for this case to decide, as we do, that the indictment is *prima facie* evidence of the existence of probable cause."

And this court explained that that decision was not in conflict with Green v. Henkel, 183 U. S. 249, because in that case the court actually entered upon the inquiry, and the District Judge found the existence of probable cause. In Green's case, 52 Fed. 106, Judge Jackson distinctly held it was well settled that under the application for an order of removal, authorized by Section 1014, R. S., that the District Court or Judge might look into the indictment to ascertain, first, whether an offense against the United States had been charged, and, second, "whether the court to which the accused is sought to be removed *has jurisdiction of the same.*" And in the same opinion he said that before a trial could be had before any court of the United States, said court must have jurisdiction over the place, the person and the subject matter.

And in the case of Horner v. U. S., 143 U. S. 207, it was held that it was the duty of the District Judge, acting under Section 1014, to inquire into the question as to whether the court in which the indictment was rendered *has jurisdiction,* and that his determination on that question was reviewable by writ of habeas corpus.

The court in discussing this question said:

> "The District Judge, in exercising his jurisdiction under Section 1014 of the Revised Statutes to issue a warrant for the removal of Horner to the Southern District of Illinois, had a right to determine whether or not the offense was within the *jurisdiction* of the District Court of the United States for that district, and that determination was reviewable by habeas corpus." (Citing Callan v. Wilson, 127 U. S. 540.)

The Constitution, Article IV, Section 8, declares that "full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State, and Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof."

The first Congress under the Constitution, after prescribing the manner in which the records and judicial proceedings of the courts of any State should be authenticated and proved, enacted that "the said records and judicial proceedings, authenticated as aforesaid, shall have such faith and credit given to them in every court within the United States, as they have by law or usage in the courts of the State from whence the said records are or shall be taken." (Rev. Stats. 905.) A great many

instances have been presented to the various courts of final resort in this country, and to this court, under these provisions of the Constitution and statute, and in no single instance, that I know of, has it ever been held that it was not open to the defendant, when sued in one State, upon the judgment and record, properly authenticated, from another State, that he could not show that the court which rendered the judgment was without jurisdiction, and in every case that I know of it has been held that that question of jurisdiction *was always* open for inquiry on the plea of *nul tiel* record. Thus it was held in Mills v. Duryee, decided in 1813, 7 Cranch. 481, that while the plea of *nil debet* could not be used, the plea of *nul tiel* record could.

In the case of D'Arcy v. Ketchem, decided in 1850, reported in 11 How. 165, it was held that the provisions of the Constitution and laws of the United States gave no effect in one State to judgments rendered in another State by a court *having no jurisdiction* of the cause or the parties.

In the case of Christmas v. Russell, decided in 1856, 5 Wall. 290, it was held that while it was open to a defendant sued on a foreign judgment to show that it had been obtained by fraud, that such a defense was not open where the judgment was rendered in another State, due entirely to the provision of the Constitution and statutes quoted. But in that case the court was careful to note the fact that the judgment must be rendered by a court of *competent jurisdiction*, and if so rendered, then it could not be collaterally impeached or called in question.

And in Bishop v. Wethered, decided in 1869, 9 Wall. 812, Justice Bradley delivering the opinion of the court,

held that it was open to a defendant to show that he was not served with process in England, where the judgment was rendered, and that the court was therefore *without jurisdiction* of the person.

And in Hanley v. Donohue, decided in 1885, 116 U. S. 1, and Wisconsin v. Pelican Insurance Co., decided in 1888, 127 U. S. 265, it was held that judgments recovered in one State of the Union, when proved in courts of another, differ from judgments recovered in a foreign country in no other respect than in not being re-examinable on their merits, nor impeachable for fraud in obtaining them, *if* rendered by a court having *jurisdiction* of the cause and of the parties.

The old case of D'Arsey v. Ketchen, *supra,* has been followed a great many times by this court, and has never been doubted, and it seems to me it is bound to be the law upon the most elementary principles. A judgment rendered in a court which had no jurisdiction is bound to be void, therefore, there is no such judgment; therefore, it is not referred to by the Constitution and statute, when it is declared "that full faith and credit" shall be given. This has been often held and is a necessary consequence.

In this case, if the Middle District of Tennessee was without jurisdiction, then the indictment is *void,* and can not have any force whatever in *any* court, and is subject to inquiry in *any court* collaterally. The contention of the Government is that the jurisdictional fact can be conclusively shown by an indictment which may be void, which means that a void indictment can be conclusive evidence of its own validity. If this be true, then the old proposition of how a man may "lift himself over the fence by his boot straps" has been solved.

We do not think that any warrant can be found for action of the Judges, in the laws of Virginia, nor do we think that it is within the power of Virginia or any State to change the rule on this subject, and it is quite clear to my mind that it has not attempted to do so.

Suppose a man should be indicted in Fauquier County, Virginia, for murder, and arrested in Richmond. Is it not plain that it would be open to him to object to being taken to Fauquier County, by conclusively showing that he committed the act complained of, but in Rappahannock and not Fauquier County; that the act complained of and for which he was indicted was committed in Washington, Rappahannock County? Upon his showing that fact conclusively to the mind of the Judge, would that Judge perform his duty if he refused to release him on a writ of habeas corpus? There might be the gravest reasons why he would not care to be carried back to Fauquier County. It might be that the county was filled with the relatives and adherents and friends of the deceased, and that it would be very dangerous to him to send him back to Fauquier County. There would be no right in the court sitting in Fauquier County to try him, yet his life might be far more endangered from mob violence in that county, than it would be from a jury in the county in which the offense was committed, because it may be that he had a perfectly clear defense. The same thing is true in a case of this sort. Suppose a man is indicted in California, and arrested in Maine under Section 1014 of the Statutes. Can it be possible that the courts are justified in committing so gross and cruel an injustice as to send that man from Maine to California to be tried by a court which had no jurisdiction? It may be that a man when arrested might be in such a

delicate state of health that the trip across the continent would result in his death. It seems certain that unless the man was very rich, that to put him to the expense of going across the continent, with his witnesses, employing counsel, and getting ready for trial, would ruin him financially. These conditions have been commented upon by this court in several cases, and given as a reason why a man should not be sent out of his own jurisdiction to a foreign jurisdiction, particularly where the indictment charged no offense against the Government, and I submit that *exactly* the same reason applies with *equal* force where the court to which he is to be sent has *no jurisdiction to try him.*

Respectfully submitted,

JAMES P. HELM,

Counsel for George Braden.

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DEC 5 1906
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 375.

GEORGE BRADEN, APPELLANT,

vs.

MORGAN TREAT, UNITED STATES MARSHAL IN AND FOR THE EASTERN DISTRICT OF VIRGINIA, ET AL., APPELLEES.

SUPPLEMENTAL BRIEF FOR APPELLANT.

JAMES P. HELM,
Of Counsel for George Braden.

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SUPREME COURT OF THE UNITED STATES.

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GEORGE BRADEN, APPELLANT,

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MORGAN TREAT, UNITED STATES MARSHAL IN AND FOR THE EASTERN DISTRICT OF VIRGINIA, ET AL., APPELLEES.

SUPPLEMENTAL BRIEF FOR APPELLANT.

With permission of the court, I wish to supplement my brief by a few suggestions:

I.

The sixth amendment to the Constitution provides that "In all prosecutions, the accused shall enjoy the right to a "speedy and public *trial*, by an impartial jury of the *State* "and *district* wherein the crime shall have been committed, "which district shall have been previously ascertained by "law, and to be informed of the nature and cause of the "accusation; to be confronted with the witness against him; "to have compulsory process for obtaining witnesses in his "favor, and to have the assistance of counsel for his defense."

(*a*) I take it that it will not be questioned that this language is equivalent to a declaration that the accused shall not be tried in any court within whose jurisdiction the offense was not committed.

(*b*) When Mr. Braden was arrested in Richmond, Virginia, he insisted that this constitutional right of his should be protected and vindicated, and offered to show by evidence of himself and others that he had not committed any of the alleged offenses within the middle district of Tennessee. This right was denied by the court on the ground that the *indictment* declared that he *had* done so, and that the indictment was *conclusive* evidence of the truth of *its own* statement; therefore no evidence would be heard and the order of removal was made.

(*c*) Now it is said in this court that the most that can be said is that the lower court erred in its construction of section 1014, Revised Statutes, and that no constitutional question is involved.

It is further said that the error is not prejudicial, because all these questions can be tried in the court in which the indictment was found.

In other words, it is proposed to protect the appellant's constitutional right *against* trial in a district where he *did not* commit the offense, *by trying him there.*

(*d*) I wish to emphasize the point that the *only court* that could protect this constitutional right is the court in the jurisdiction in which the arrest was made, because if that court grants the warrant of removal, the next judicial step—assuming the case is not brought to this court as this one was—is the *trial* forbidden by the Constitution. Therefore it becomes the duty of the court in the jurisdiction *of arrest* to hear evidence upon the question of whether the accused did or did not commit the offense within the jurisdiction of the court in which the indictment was found.

(*e*) But it is said that the appellant not only offered to show that he did not commit the offense within the middle district of Tennessee, but that he had never committed the offense anywhere, and that this amounted to no more than a plea of "not guilty." But surely an accused does not imperil his *constitutional* right to be tried in the district in which he commits the offense, by adding to his offer to show that he did not commit the act alleged within whose jurisdiction the indictment was returned, but that he was innocent of having committed it at all. The two things are separate and distinct and the two different ideas embraced in the offer of proof are separate and distinct, raising separate and distinct questions, and should not be confused.

II.

It is said that the evidence offered, as shown by the avowal, was immaterial, because although the conspiracy alleged might have been formed in New York, yet if any one of the conspirators or an agent of any one of them had gone into the middle district of Tennessee, and there performed any act in furtherance of the object of the conspiracy, it rendered all of the conspirators indictable in the middle district of Tennessee, upon the ground that that overt act is a renewal of the conspiracy within that district.

Whether an overt act is necessary to complete the offense of conspiracy within the meaning of the Sherman Anti-Trust Act, or whether the offense is completed when the agreement is made, and at the place where the agreement is made, is a question fully dealt with in the principal brief; therefore I shall not in this connection discuss that question, but for the *purpose* of *this* argument only waive it.

What I wish to contend here is, that any act said to have been committed within the jurisdiction of middle Tennessee must be such an act as would be at least admissible in evidence upon the question as to whether or not a conspiracy

was formed or executed within the middle district of Tennessee.

For instance, to put a strong illustration, if A, B, and C should in New York conspire to burn down the house of D in Nashville, certainly evidence that an agent of A or that A himself, had sold to a party in Alabama ten tons of fertilizer would not be evidence even tending to show any act in furtherance of the conspiracy; and so I say here, the overt act alleged against the Federal Chemical Company, of which Mr. Braden is the president, must be of such a nature as would tend to show that it was carrying out the *object* of the conspiracy, which is alleged to have been for the purpose of destroying competition and enhancing the price of fertilizer. It must not be merely such an act as that company, in the ordinary course of business, must necessarily have performed, even if it had expressly refused to go into the conspiracy; but there should be in the indictment some averment that the fertilizer had been sold at the enhanced price agreed upon as the result of the conspiracy.

Now there are only two averments of specific acts against the Federal Chemical Company. These are:

(*a*) That the company, on December 28, 1903, at West Nashville, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise consigned and to be shipped to one Walker at Athens, Alabama (Record No. 375, pp. 25, 26).

(*b*) That said Federal Chemical Company, on February 2, 1904, at West Nashville, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise, consigned and to be shipped to the firm of Hendricks Bros. & McGavock at Athens, Alabama, (*Id.*, p. 26).

Now, the point I make is that the Federal Chemical Company, being lawfully engaged in the fertilizer business,

would be bound to make such shipments, whether it was a member, or had absolutely refused to be a member, of any conspiracy, and that the averments that these things were unlawfully done are mere conclusions and not substantive facts.

Taking, therefore, the averments in their broadest sense, they do not state *facts* which would be properly admissible as evidence to show that the alleged conspiracy was formed or attempted to be executed within the middle district of Tennessee, and therefore the matter stands as if the averment in the indictment had been that the agreement to conspire had been entered into by the conspirators within the middle district of Tennessee, without any attempt to aver any of the specific acts relied on as "overt acts."

Thus treating the matter, the bald question is presented whether the district judge erred in refusing to hear evidence to show that no such agreement was made within the middle district of Tennessee, and whether the Circuit Court erred in refusing to release the prisoner on *habeas corpus* when the same evidence was offered.

Respectfully submitted,

JAMES P. HELM,
Of Counsel for George Braden.

FILE COPY.

Nos. 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

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FILED.
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JAMES H. McKENNE

JAMES G. TINSLEY, APPELLANT,
vs.
MORGAN TREAT, UNITED STATES MARSHAL, ET AL.

WM. DEC. KESSLER, APPELLANT,
vs.
MORGAN TREAT, UNITED STATES MARSHAL, ET AL.

SAMUEL T. MORGAN, APPELLANT,
vs.
MORGAN TREAT, UNITED STATES MARSHAL, ET AL.

AUSTIN B. CARPENTER, APPELLANT,
vs.
MORGAN TREAT, UNITED STATES MARSHAL, ET AL.

FORTESQUE WHITTLE, APPELLANT,
vs.
MORGAN TREAT, UNITED STATES MARSHAL, ET AL.

FRANK E. WILCOX, APPELLANT,
vs.
MORGAN TREAT, UNITED STATES MARSHAL, ET AL.

GEORGE BRADEN, APPELLANT,
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FRANK S. ROYSTER, APPELLANT,
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J. RICE SMITH, APPELLANT,
vs.
MORGAN TREAT, UNITED STATES MARSHAL, ET AL.

CHARLES F. BURROUGHS, APPELLANT,
vs.
MORGAN TREAT, UNITED STATES MARSHAL, ET AL.

CHARLES H. MCDOWELL, APPELLANT,
vs.
MORGAN TREAT, UNITED STATES MARSHAL, ET AL.

ON APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

JAMES G. TINSLEY, APPELLANT, *vs.* MORGAN TREAT, UNITED STATES MARSHAL, ET AL.	No. 369.
WM. DEC. KESSLER, APPELLANT, *vs.* MORGAN TREAT, UNITED STATES MARSHAL, ET AL.	No. 370.
SAMUEL T. MORGAN, APPELLANT, *vs.* MORGAN TREAT, UNITED STATES MARSHAL, ET AL.	No. 371.
AUSTIN B. CARPENTER, APPELLANT, *vs.* MORGAN TREAT, UNITED STATES MARSHAL, ET AL.	No. 372.
FORTESQUE WHITTLE, APPELLANT, *vs.* MORGAN TREAT, UNITED STATES MARSHAL, ET AL.	No. 373.
FRANK E. WILCOX, APPELLANT, *vs.* MORGAN TREAT, UNITED STATES MARSHAL, ET AL.	No. 374.
GEORGE BRADEN, APPELLANT, *vs.* MORGAN TREAT, UNITED STATES MARSHAL, ET AL.	No. 375.
FRANK S. ROYSTER, APPELLANT, *vs.* MORGAN TREAT, UNITED STATES MARSHAL, ET AL.	No. 376.
J. RICE SMITH, APPELLANT, *vs.* MORGAN TREAT, UNITED STATES MARSHAL, ET AL.	No. 377.
CHARLES F. BURROUGHS, APPELLANT, *vs.* MORGAN TREAT, UNITED STATES MARSHAL, ET AL.	No. 378.
CHARLES H. MCDOWELL, APPELLANT, *vs.* MORGAN TREAT, UNITED STATES MARSHAL, ET AL.	No. 379.

ON APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

BRIEF FOR THE UNITED STATES.

STATEMENT.

These are habeas corpus proceedings instituted in the Circuit Court of the United States, Eastern District of Virginia, to test the validity of warrants

granted by the United States district judge under section 1014, Revised Statutes, directing removal of appellants from Richmond, where they were arrested, to the Middle District of Tennessee, where they had been indicted by a Federal grand jury for criminal conspiracy in restraint of trade.

In the main all the cases are alike, and, following the brief for appellants, they will be treated herein as one. The record in the case of James G. Tinsley will be referred to.

In May, 1906, a grand jury in the United States Circuit Court for the Middle District of Tennessee returned an indictment against appellants and many other individuals and corporations charging them with violating within that district the act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," by engaging in a conspiracy in restraint of interstate trade in fertilizers, by engaging in a conspiracy whereby such trade was restrained, and also with violating section 5440, Revised Statutes, by conspiring to commit an offense against the United States, to wit, the offense of engaging in a combination in restraint of such trade.

July 10, 1906, the Government presented to United States District Judge Waddill a copy of the indictment, together with a complaint of Marshal Treat, alleging that he believed James G. Tinsley stood indicted by the grand jury for the Middle District of Tennessee for violating the act of Con-

gress to protect trade and commerce against unlawful restraints and monopolies, etc.

Thereupon the judge issued a warrant for the accused, and he was brought in to be dealt with according to law.

Identity was admitted and an authenticated copy of the indictment presented. The Government then asked a warrant directing removal.

> (R. 120.) Thereupon the defendant, J. G. Tinsley, offered himself as witness in his own behalf, and being about to be sworn, the United States, by its counsel, thereupon objected to the witness being sworn or to any testimony being given in rebuttal of the indictment in these proceedings, on the ground that the identity of the defendant being admitted, inasmuch as the indictment on its face charges offenses against the United States committed and triable in the jurisdiction in which the defendant stands indicted, no evidence is admissible here to impeach the indictment, and the order of commitment should be made without other proof.
>
> The defendant's counsel thereupon offered to prove by the defendant and other witnesses then and there present that the Circuit Court for the Middle District of Tennessee had no jurisdiction over the person of said defendant touching the offenses charged in said indictment, in that defendant and said other witnesses would, if permitted, testify that defendant is, and has been for many years, a resident and citizen of the city of Richmond,

> State of Virginia, and that defendant never at any time, or at any place in the State of Tennessee, at the times charged in the indictment, did, or performed, or was party to, or engaged in any act or thing in the said indictment charged as having been done and performed in any way whatsoever by this defendant in the said State of Tennessee; nor has defendant done, or performed, or been engaged in, or a party to the same, or any of them, in any other place or places, at any other time or times whatsoever.

After argument the court ruled that in a proceeding for arrest and removal under section 1014, Revised Statutes, before a United States judge sitting in Virginia, where the right of a preliminary examination on a criminal charge no longer exists prior to trial upon the merits, upon the Government's presentation of a sufficient indictment regularly found by a grand jury in a court of the United States properly charging commission of an offense within the district where found, coupled with proof of identity, it is his duty to bail the accused for appearance before the court where indicted or cause him to be removed thereto. He accordingly decided the testimony offered was inadmissible and directed that the accused either give bail or be held for removal.

Defendant declined to give bond, a warrant directing removal was issued, and he remained in custody pending its execution.

It should be especially noted that no objection was offered to the validity of the indictment at any time during the proceedings before the district judge.

July 11, 1906, application was made to the Circuit Court for habeas corpus and a writ of certiorari to bring up the proceedings before the district judge. Both were granted and due returns made.

The petition alleges that Tinsley is unlawfully imprisoned and restrained of his liberty by the marshal under color of authority of the United States by virtue of a warrant for removal claimed to have been issued under section 1014, Revised Statutes. It details the steps taken before and action by the district judge as to the arrest, rulings and orders made during the hearing before him and the warrant of removal.

The petitioner then charges that under and by virtue of clause 3, section 2, article 3, Constitution of the United States, and of the sixth amendment, he was entitled to be tried and could only be tried for any alleged offense against the United States in the State and district where the offenses charged in the indictment were committed; that the offenses specified in the indictment were not committed in the Middle District of Tennessee; that none of the acts mentioned and supposed to have been engaged in by the petitioner were done within that district; and that in case he should be removed for trial under the indictment and there held he would not be tried within the district in which the offenses

charged were committed, as required by the Constitution; and further, that the indictment states no offense is insufficient and void.

It further alleges that the imprisonment and detention are without authority of law, the proceedings before the district judge illegal, and the warrant of removal in violation of article 3, section 2, of the Constitution, and the sixth amendment; that the rulings of the district judge in the exclusion of the evidence offered by petitioner and in holding the certified indictment conclusive, and in refusing to permit introduction of any evidence in behalf of petitioner, deprived him of rights secured by the Constitution and by section 1014, Revised Statutes; and that he is deprived of his liberty without due process of law.

At the hearing before the Circuit Court an offer was made to prove by witnesses the facts set forth in the petition. The court held the testimony immaterial; that the indictment properly alleged a conspiracy for the commission of which personal presence was not necessary in the Middle District of Tennessee; that the action of the district judge was correct; and dismissed the writ.

Appeal was taken directly to this court.

SEC. 1014, Revised Statutes:

> For any crime or offense against the United States, the offender may, by any justice or judge of the United States, or by any commissioner of a circuit court to take bail, or by any chancellor, judge of a supreme or superior court, chief or first

judge of common pleas, mayor of a city, justice of the peace, or other magistrate, of any State where he may be found, and agreeably to the usual mode of process against offenders in such State, and at the expense of the United States, be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States as by law has cognizance of the offense. Copies of the process shall be returned as speedily as may be into the clerk's office of such court, together with the recognizances of the witnesses for their appearance to testify in the case. And where any offender or witness is committed in any district other than that where the offense is to be tried, it shall be the duty of the judge of the district where such offender or witness is imprisoned, seasonably to issue, and of the marshal to execute, a warrant for his removal to the district where the trial is to be had.

ARGUMENT.

I.

The court is without jurisdiction and the appeal should be dismissed.

Judiciary act March 3, 1891 (26 Stat., 827):

> SEC. 5. That appeals or writs of error may be taken from the district courts or from the existing circuit courts direct to the Supreme Court in the following cases:
>
> In any case in which the jurisdiction of the court is in issue; in such cases the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision.

From the final sentences and decrees in prize causes.

In cases of conviction of a capital crime.

In any case that involves the construction or application of the Constitution of the United States.

In any case in which the constitutionality of any law of the United States, or the validity of construction of any treaty made under its authority, is drawn in question.

In any case in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States.

Nothing in this act shall affect the jurisdiction of the Supreme Court in cases appealed from the highest court of a State nor the construction of the statute providing for review of such cases.

Appeals from decrees of circuit courts in habeas corpus proceedings can not be taken directly to this court unless they come within one of the clauses of section 5.

Lau Ow Bew v. *United States*, 144 U. S., 47, 58.

Cross v. *Burke*, 146 U. S., 82, 88.

In re Lennon, 150 U. S., 393, 399.

The only ground upon which an argument can be bottomed to sustain the present appeal is that the "case involves the construction or application of the Constitution of the United States," within the meaning of those terms in section 5; and in order for that paragraph to apply there must be a real, sub-

stantial dispute or controversy as to such construction or application.

Carey v. *Houston and Texas Central Ry.*, 150 U. S., 181.

Western Union Telegraph Co. v. *Ann Arbor Railroad Company*, 178 U. S., 243.

American Sugar Refining Co. v. *New Orleans*, 181 U. S., 281.

A mere allegation that some constitutional question is involved does not suffice to give jurisdiction when it appears from the whole record that such a point is not really and substantially in controversy.

No real substantial dispute or contention concerning the construction or application of any part of the Constitution exists. The proceedings were under section 1014, Revised Statutes, and the thing in issue was the proper construction of that section, which is the foundation of whatever rights the petitioner had. The Government contended that under it a sufficient indictment with proof or admission of identity made out a conclusive case and rendered it obligatory upon the judge to direct removal. This view prevailed. Petitioners claimed that under it they had the right to introduce proof in contradiction of the indictment. Manifestly the issue was upon the construction of the section. (*Beavers* v. *Haubert*, 198 U. S., 77, 85.)

If instead of section 1014 Congress had enacted in express words what the district judge held the law to be, a removal thereunder would not have been a

violation of any constitutional provision. It follows, even if it be admitted that the judge misconstrued the statute, no constitutional guaranty was infringed.

Rawlins v. *Georgia*, 201 U. S., 638.
In re Moran, decided November 5, 1906.

It seems obvious that Congress might provide by statute for a bench warrant which should run thruout the Union, and that one arrested thereunder in Virginia might be carried at once to Tennessee for trial without violation of constitutional rights. Removal under the judgment of the court in the case under consideration would no more infringe appellant's rights than would removal under a bench warrant of the character suggested.

Constitutional suggestions without merit or where the point has been conclusively settled by this court do not suffice to give jurisdiction under section 5, act 1891.

II.

If the district judge improvidently issued the warrant for removal his action was mere error, not reviewable in a habeas corpus proceeding.

No review of the action of a judge in proceedings under section 1014 has been provided. His judgment is final.

A writ of habeas corpus can not be used to perform the functions of a writ of error or appeal.

Benson v. *McMahon*, 127 U. S., 457.
Ornelas v. *Ruiz*, 161 U. S., 502.
Bryant v. *United States*, 167 U. S., 105.
Terlinden v. *Ames*, 184 U. S., 270.
Riggins v. *United States*, 199 U. S., 548.
Felts v. *Murphy*, 201 U. S., 123, 129.

Where one in custody under judgment of a court resorts to habeas corpus two questions are open for consideration: Did the court which rendered judgment or made the order of imprisonment have jurisdiction of the subject-matter and of the person? And did the court exceed its jurisdiction?

Ex parte Lange, 18 Wall., 163.
Ex parte Parks, 93 U. S., 18, 23.
Ex parte Siebold, 100 U. S., 371, 375.
Hans Nielsen, petitioner, 131 U. S., 176.
Horner v. *United States*, 143 U. S., 577.
Greene v. *Henkel*, 183 U. S., 249, 261.
Felts v. *Murphy*, 201 U. S., 123.
Ex parte Moran, 144 Fed., 594, 604.

The district judge had jurisdiction of the parties and of the subject-matter and authority to direct removal. It was his duty to issue the warrant under proper conditions submitted for his determination—if the indictment appeared sufficient, if identity was established, and if there was probable cause for holding the party to answer.

The petitioners claim that he erred in holding the indictment sufficient and should have heard the excluded evidence and then acted.

The judge considered the validity of the indictment and sustained it. If wrongful, his action was error and does not go to the jurisdiction.

"If an inferior court or magistrate of the United States has jurisdiction, a superior court of the United States will not interfere by habeas corpus." (*Horner* v. *United States*, 143 U. S., 577.)

This court decided in *Beavers* v. *Henkel* (194 U. S., 73, 82) that a valid indictment, with proof or admission of identity, establishes probable cause sufficient to justify a warrant of removal. Such proof was before the district judge.

In *Hyde* v. *Shine* (199 U. S., 83, 84) it was declared well settled that upon habeas corpus the court will not weigh the evidence.

The trial court had a right to hear and determine. There was some evidence to support the claim of the Government, and it had power under the statute to issue a warrant. If the evidence offered by defendant was wrongfully rejected such action was mere error, in no way affects the question of jurisdiction, and is not subject to review upon habeas corpus.

III.

The action of the court below was correct.

In Virginia one indicted for crime is not entitled to a preliminary examination before being put on trial. (Virginia Code Annotated (Pollard), 1904, section 4003 and note; section 4012; *Jones's case*, 86 Va., 661.)

Before the district judge no question was raised as

to sufficiency of the indictment. After examination it was held valid by both judges below, and in view of their conclusion can not be said to be obviously bad. In the present proceeding neither this nor the trial court should inquire with great particularity as to technicalities. Such points should be considered and the legal sufficiency of the indictment determined only by the court in which it was found. (*Benson* v. *Henkel*, 198 U. S., 1, 10.)

The highly refined objections to the indictment urged in the brief for appellants were not proper matter for the nice consideration of the district judge, not because he was lacking in ability therefor, but because in the orderly way they should be decided by the trial court. And no court on habeas corpus can be required to pass upon them in advance of a trial in the court of the indictment. (*Horner* v. *United States*, 143 U. S., 577; *Riggins* v. *United States*, 199 U. S., 547.) Moreover, both judges below have adjudged against appellants' contentions—have held the indictment sufficient—and whether right or wrong that action can not be reviewed on habeas corpus.

Identity was admitted and no extraordinary facts suggested to indicate bad faith or any peculiar hardships which would result from removal, and the examining judge decided it was his duty to direct the same.

"Removal proceedings are but process for arrest—means of bringing a defendant to trial." (*Beavers* v. *Haubert*, 198 U. S., 77, 87.) The provisions prescribing how the same shall be instituted and conducted

are in section 1014, Revised Statutes, and the regularity of any arrest must be tested thereby. They originated in section 33, judiciary act 1789 (1 Stat., 91), which follows:

> That for any crime or offense against the United States, the offender may, by any justice or judge of the United States, or by any justice of the peace, or other magistrate of any of the United States where he may be found agreeably to the usual mode of process against offenders in such State, and at the expense of the United States, be arrested, and imprisoned or bailed, as the case may be, for trial before such court of the United States as by this act has cognizance of the offense. (*b*) And copies of the process shall be returned as speedily as may be into the clerk's office of such court, together with the recognizances of the witnesses, for their appearance to testify in the case; which recognizances the magistrate before whom the examination shall be may require on pain of imprisonment. And if such commitment of the offender or the witnesses shall be in a district other than that in which the offense is to be tried, it shall be the duty of the judge of that district where the delinquent is imprisoned seasonably to issue, and of the marshal of the same district to execute, a warrant for the removal of the offender, and the witnesses, or either of them, as the case may be, to the district in which the trial is to be had. And upon all arrests in criminal cases bail shall be admitted, except where the punishment may be death, in which cases it shall not

> be admitted but by the supreme or a circuit court, or by a justice of the Supreme Court, or a judge of a district court, who shall exercise their discretion therein, regarding the nature and circumstances of the offense, and of the evidence and the usages of law. And if a person committed by a justice of the supreme or a judge of a district court for an offense not punishable with death shall afterwards procure bail, and there be no judge of the United States in the district to take the same, it may be taken by any judge of the supreme or superior court of law of such State.

By act March 2, 1793 (c. 22, sec. 4; 1 Stat., 334), and act August 23, 1842 (c. 188, sec. 1; 5 Stats., 516), other individuals were authorized to arrest, imprison, and bail. The authority granted by section 33, act 1799, to require recognizances of witnesses is now found in section 879, Revised Statutes.

The first part of section 1014 provides for the arrest of any offender against the United States wherever found and without reference to whether he has been indicted. It is applicable to one within or without the district where the offense was committed and includes every criminal charge. Congress intended to adopt the usual mode of proceeding prescribed by the State, whatever that might be. The proceedings for arrest and commitment in any State are the same whether the crime was committed within or without that State; but when trial must take place without the district of arrest then, after

the offender has been committed, it becomes the duty of the district judge to issue a warrant of removal.

One charged with an offense against the United States must be arrested and committed as tho similarly charged with crime against the State. The duties of the Federal judge in reference to removal begin after the accused has been committed and the language of the statute seems to make it obligatory upon him to direct a removal upon application. It certainly does not in terms require him to hear proof and conduct an inquiry as to guilt or innocence. The removal of witnesses and offenders is put on the same basis. No doubt the Federal judge should inquire into the regularity of arrest and commitment and see that they harmonize with the law of the State; and in extraordinary cases possibly he might go further. But generally if he finds the proceedings entirely regular he should, without more, issue the warrant. At the most he has a certain discretion, to be sparingly exercised to prevent wrong, and not to be interfered with unless in case of manifest abuse.

Something concerning what Congress intended should be submitted to the determination of officers empowered to act under section 1014 may be inferred from the official station of the lowest of them. A justice of the peace as to arrest and commitment is given the same jurisdiction as any United States judge. It seems quite impossible to believe that there was a purpose to give jurisdiction to this petty officer to determine without right of appeal all

such perplexing questions as those discust in the brief for appellants. The object of section 1014 was to afford an expeditious mode for arresting and bringing one accused to trial under the ordinary safeguards prescribed by State law; and the questions preliminary to arrest and commitment were understood to be within the ability of a justice of the peace to decide.

In *Greene* v. *Henkel* (183 U. S., 249, 261) Mr. Justice Peckham, speaking for the court, said:

> We do not think that under this statute [sec. 1014] the commissioner would be warranted in taking evidence in regard to the organization of the grand jury which found the indictment, as claimed by the defendants. The indictment is valid on its face; purports to have been found by a grand jury acting in fact as such at a regular term of a district court of the United States, presided over by one of its judges and hearing testimony in the ordinary way. In our opinion such an indictment is *prima facie* good, and when a copy of it is certified by the proper officer, a magistrate, acting pursuant to section 1014 of the Revised Statutes, is justified in treating the instrument as an indictment found by a competent grand jury and is not compelled or authorized to go into evidence which may show or tend to show violations of the United States statutes in the drawing of the jurors composing the grand jury which found the indictment.

I submit that there is no stronger reason for compelling the committing magistrate to go into evidence contradicting the allegations of the indictment than into questions relating to organization of the grand jury. If the grand jury was improperly formed an indictment is bad; and if bad, what reason would compel a defendant to go to a distant State and answer which would not necessitate the same course where its allegations were probably untrue?

In *Beavers* v. *Henkel* (194 U. S., 73, 84) the court, speaking by Mr. Justice Brewer, said:

> The thought is that no one shall be subjected to the burden and expense of a trial until there has been a prior inquiry and adjudication by a responsible tribunal that there is probable cause to believe him guilty. But the Constitution does not require two such inquiries and adjudications. The Government, having once satisfied the provision for an inquiry and obtained an adjudication by the proper tribunal of the existence of probable cause, ought to be able without further litigation concerning that fact to bring the party charged into court for trial. The existence of probable cause is not made more certain by two inquiries and two indictments. Within the spirit of the rule of giving full effect to the records and judicial proceedings of other courts, an indictment found by the proper grand jury should be accepted everywhere through the United States as at least prima facie evidence of the existence of probable cause. And the place where such inquiry must be had and

the decision of a grand jury obtained is the locality in which by the Constitution and laws the final trial must be had.

In *Benson* v. *Henkel* (198 U. S., 1, 10) Mr. Justice Brown, speaking for the court, said:

> The extent to which a commissioner in extradition may inquire into the validity of an indictment put in evidence before him as proof of probable cause of guilt has never been definitely settled, although we have had frequent occasion to hold generally that technical objections should not be considered, and that the legal sufficiency of the indictment is only to be determined by the court in which it is found. * * *
>
> Indeed, it is scarcely seemly for a committing magistrate to examine closely into the validity of an indictment found in a Federal court of another district and subject to be passed upon by such court on demurrer or otherwise. * * *

In *Hyde* v. *Shine* (199 U. S., 62, 84) this court, by Mr. Justice Brown, said:

> In the Federal courts, however, it is well settled that upon habeas corpus the court will not weigh the evidence, although if there is an entire lack of evidence to support the accusation the court may order his discharge. In this case, however, the production of the indictment made at least a *prima facie* case against the accused, and if the commissioner received evidence on his behalf it was for him to say whether upon the whole testimony there was proof of probable cause [*In re Oteiza,*

136 U. S., 330; *Bryant* v. *United States*, 167 U. S., 104.]

Benson v. *McMahon*, 127 U. S., 457.

Ornelaz v. *Ruiz*, 161 U. S., 502, 508.

In re Belknap, 96 Fed., 614.

Indictment by the grand jury in Tennessee after investigation was an adjudication of probable cause to believe petitioners guilty. The Constitution does not require two such inquiries before an offender can be put upon trial, and there is nothing in section 1014 necessitating a second investigation of matters already solemnly determined. If an offender is arrested in the district where the indictment was found he can not, unless provided for by the law of the State, claim an examination before trial, and no reason appears why different treatment should be absolutely necessary as to one apprehended just outside that territory. Certainly their constitutional rights are the same, and if a preliminary hearing can be demanded by one it is difficult to see how it can be denied the other. The reasoning advanced in the brief for appellants would require determination of the *validity* of all indictments and the guilt of all offenders whenever asked for in advance of trial.

The questions now raised as to place of trial upon a charge of conspiracy were before the court in *Hyde* v. *Shine* and were ruled against the contention of appellants. The court said (p. 76): "As the indictment in this case charges that the conspiracy was entered into in the city of Washington it becomes unnecessary to consider whether an indictment will lie within the jurisdiction where the overt act was committed, etc."

Habeas corpus proceedings test the validity of confinement—not its justness, and in them proof of guilt or innocence is immaterial. If the trial court had jurisdiction and kept within it no relief can be given. Upon application for warrant of removal a district judge cannot try the accused as upon a plea of not guilty as, in effect, was asked below.

IV.

The Indictment was sufficient, and no injury was done petitioners by excluding the evidence they offered.

The indictment sufficient.

There are six counts. Two are based upon section 5440, Revised Statutes, and charge a conspiracy in the Middle District of Tennessee to commit an offense by engaging in a combination in restraint of trade and commerce among the several States in violation of the act of July 2, 1890.

Four counts charge violations of the act of July 2, 1890. In varying language they allege:

That 31 corporations, 2 firms, and 24 individuals, residents of the Middle District of Tennessee and of other districts and States, in the said Middle District of Tennessee and in violation of section 1, act July 2, 1890, unlawfully did knowingly engage in a conspiracy in restraint of trade between the States, and many overt acts alleged to have been done in pursuance of the conspiracy in the Middle District of Tennessee and elsewhere are set out. It is alleged that the corporations and firms specified were

engaged in interstate commerce as manufacturers of and dealers in fertilizers in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas, and Tennessee; that together they controlled in those States 90 per cent of the business in such commodity; that before the conspiracy they were engaged in interstate commerce in active competition with each other; that for the purpose of preventing and destroying such competition and to enable them to fix and maintain uniform and noncompetitive prices they unlawfully engaged in a conspiracy; that by agreement the prices for and amount of fertilizer which should be sold by each in the States specified during any year were fixt, and if more was sold by any one he was required to pay for each excessive ton at least $1, if less he was to receive from his co-conspirators for each deficient ton a like sum; that as a means for carrying out the purposes of the conspiracy a corporation called the Colonial Development Company (Limited) was organized under the laws of Canada, and its stock prorated among the conspirators; that to insure maintenance of prices each conspiring corporation was required to pay to the Canadian corporation 20 cents per ton upon the amount which by allotment it was permitted to sell; if agreed prices were maintained this amount was returned at the end of the season, otherwise it might not be, and thru this corporation also collections

were made for excess sales and payments for deficiencies; that in pursuance of the general plan outlined the defendant corporations, firms, officers, and agents conducted their fertilizer business in the States named, greatly advanced former prices, ceased to compete with each other, and secured for themselves enormous profits at the expense of purchasers.

Act July 2, 1890 (26 Stats., 209):

> SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

The indictment alleges a conspiracy deliberately engaged in by competitors in the Middle District of Tennessee and in destruction of competition in interstate commerce. That such a conspiracy is unlawful and in violation of the Sherman antitrust law seems clear.

Addystone Pipe &c. Co. v. *United States*, 175 U. S., 211.

Montague v. *Lowry*, 193 U. S., 38.

Northern Securities Co. v. *United States*, 193 U. S., 197.

Swift & Co. v. *United States*, 196 U. S., 375.

A habeas corpus proceeding is not the proper way to test the validity of indictments upon technical points. The trial court is the place for all such matters. (*Riggins* v. *United States*, 199 U. S., 547–551.)

In reply to the argument that the facts specified in the indictment show only a combination whereas it alleges conspiracy, properly defined to be a combination of two or more persons to accomplish an unlawful end by lawful means or a lawful end by unlawful means, it seems only necessary to refer to section 1035, Revised Statutes, which provides that "in all criminal causes the defendant may be found guilty of any offense the commission of which is necessarily included in that with which he is charged in the indictment." One indicted for murder could hardly hope to escape trial by showing that he was guilty of manslaughter.

The indictment charges a conspiracy engaged in within the Middle District of Tennessee and that for the purposes of removal is sufficient and precludes inquiry concerning the facts relating to the actual place where it was first entered into. (*Hyde* v. *Shine*, 199 U. S., 76.) The authorities holding that prosecution for a conspiracy may take place, either where it was formed or where an overt act was committed, are too overwhelming to permit any court to hold the contrary in a removal proceeding.

The contention that the crime of conspiracy is complete when the combination is entered into and that no overt act renews or continues it was put forward in *Lorenz* v. *United States* (24 App. Cases D. C., 337, 386) and overruled. This court denied an application for certiorari (196 U. S., 640).

No injury resulted.

Identity having been admitted one question of fact remained for consideration—Whether there was probable cause to believe the accused guilty of the crime charged. The district judge was the tribunal to decide and if any legal evidence supported his conclusion was final—not reviewable in any way. (*Greene* v. *Henkel*, 183 U. S., 261.)

The indictment was presented; it was legal evidence and made out a prima facie case. (*Beavers* v. *Henkel*, 194 U. S., 85.) The judge decided in effect that the evidence offered by petitioners was immaterial—that if introduced it would not affect his decision. Having proof of probable cause sufficiently strong to satisfy him notwithstanding all the evidence offered he declared his conclusion at once, and petitioner is in no worse condition than if the judge had listened for thirty days and then directed the warrant. On abundant evidence probable cause was found. What was offered in opposition would not have affected the conclusion, and no valid complaint can be made because of the refusal to go thru the idle ceremony of listening to it.

In a removal proceeding the cause should not be tried as on a plea of not guilty—not even if the defense is an alibi. The mass of proof offered and rejected was appropriate only for a trial court. The highly interesting questions discust in the brief for appellants can not, by suing out habeas corpus, be brought before this court and a decision obtained in advance of a trial. (*Riggins* v. *United States*, 199 U. S., 547.)

Crimes are triable where committed, not where the offender happened to be in person on the day of the transgression. (*Burton* v. *United States*, 202 U. S., 344.) And it is well settled that upon a charge of conspiracy all the conspirators may be tried in the jurisdiction where anyone does an overt act.

"Although technically the place where the conspiracy is entered into is the place of venue, yet it is generally held that the venue may be laid as to any or all of the conspirators in the county in which an act was done by any of them in furtherance of the criminal design, and consequently in this county all the coconspirators are indictable." (*Wharton's Criminal Law*, section 1397.)

Wharton's Conflict of Laws(Parmele), vol. 2, ch. 13, p. 1603.

Bishop's Criminal Procedure, secs. 61, 236.

6 Am. and Eng. Enc. of Law (2d ed.), 844.

Brown on Jurisdiction, sec. 82, p. 328.

Beale's Crim. Pl. and Prac., sec. 5.

Archbold's Crim. Pl. and Prac. (Waterman's ed.), pp. 246 and 1052.

Hyde v. *Shine*, 199 U. S., 62, 76.
Rex v. *Brissac*, 4 East., 164.
Commonwealth v. *Westervelt*, 11 Phila. (Pa.), 461.
Commonwealth v. *Corlies*, 3 Brewst. (Pa.), 575.
Commonwealth v. *Gillespie*, 7 Sergt. and Rawle (Pa.), 469.
People v. *Arnold*, 46 Mich., 275.
People v. *Mather*, 4 Went. (N. Y.), 259.
United States v. *Rindskopf*, 6 Biss., 259.
United States v. *Newton*, 52 Fed., 275.

I respectfully ask that the appeals be dismissed or the judgment of the court below be affirmed.

J. C. McReynolds,
Assistant Attorney-General.

November, 1906.

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FILE COPY.

Nos. 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

Office Supreme Court
FILED
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JAMES H. McKINN

JAMES G. TINSLEY, APPELLANT,
vs.
MORGAN TREAT, UNITED STATES MARSHAL, ET AL.

WM. DEC. KESSLER, APPELLANT,
vs.
MORGAN TREAT, UNITED STATES MARSHAL, ET AL.

SAMUEL T. MORGAN, APPELLANT,
vs.
MORGAN TREAT, UNITED STATES MARSHAL, ET AL.

AUSTIN B. CARPENTER, APPELLANT,
vs.
MORGAN TREAT, UNITED STATES MARSHAL, ET AL.

FORTESQUE WHITTLE, APPELLANT,
vs.
MORGAN TREAT, UNITED STATES MARSHAL, ET AL.

FRANK E. WILCOX, APPELLANT,
vs.
MORGAN TREAT, UNITED STATES MARSHAL, ET AL.

GEORGE BRADEN, APPELLANT,
vs.
MORGAN TREAT, UNITED STATES MARSHAL, ET AL.

FRANK S. ROYSTER, APPELLANT,
vs.
MORGAN TREAT, UNITED STATES MARSHAL, ET AL.

J. RICE SMITH, APPELLANT,
vs.
MORGAN TREAT, UNITED STATES MARSHAL, ET AL.

CHARLES F. BURROUGHS, APPELLANT,
vs.
MORGAN TREAT, UNITED STATES MARSHAL, ET AL.

CHARLES H. McDOWELL, APPELLANT,
vs.
MORGAN TREAT, UNITED STATES MARSHAL, ET AL.

MOTION TO ADVANCE.

In the Supreme Court of the United States.

October Term, 1906.

James G. Tinsley, Appellant, *vs.* Morgan Treat, United States Marshal, et al.	No. 369.
Wm. DeC. Kessler, Appellant, *vs.* Morgan Treat, United States Marshal, et al.	No. 370.
Samuel T. Morgan, Appellant, *vs.* Morgan Treat, United States Marshal, et al.	No. 371.
Austin B. Carpenter, Appellant, *vs.* Morgan Treat, United States Marshal, et al.	No. 372.
Fortesque Whittle, Appellant, *vs.* Morgan Treat, United States Marshal, et al.	No. 373.
Frank E. Wilcox, Appellant, *vs.* Morgan Treat, United States Marshal, et al.	No. 374.
George Braden, Appellant, *vs.* Morgan Treat, United States Marshal, et al.	No. 375.
Frank S. Royster, Appellant, *vs.* Morgan Treat, United States Marshal, et al.	No. 376.
J. Rice Smith, Appellant, *vs.* Morgan Treat, United States Marshal, et al.	No. 377.
Charles F. Burroughs, Appellant, *vs.* Morgan Treat, United States Marshal, et al.	No. 378.
Charles H. McDowell, Appellant, *vs.* Morgan Treat, United States Marshal, et al.	No. 379.

10466—06

MOTION TO ADVANCE.

These are appeals in habeas-corpus proceedings instituted to prevent the removal of appellants from one district to another for trial upon an indictment brought under the Antitrust Act of July 2, 1890.

Indictments were found charging the appellants with engaging in a conspiracy in restraint of trade, in violation of section 1 of the Antitrust Act, also for conspiring to commit an offense, to wit, the offense of engaging in a combination in restraint of trade against the United States in violation of section 5440 of the Revised Statutes. The combination was popularly known as the "Fertilizer Trust," and it sought to control the prices of fertilizers in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Tennessee.

The cases are similar, and it will be sufficient for the purposes of this motion to state the facts in one. In case No. 369 the appellant, James G. Tinsley, was indicted May 25, 1906, with many other persons and corporations, at Nashville, Tenn., for a violation of the Antitrust Act. Upon the complaint of the appellee, Treat, and a certified copy of the indictment found, a warrant was issued to arrest the defendant by the district judge for the Eastern District of Virginia. He was thereupon brought before Hon. Edmund Waddill, jr., United States district judge, under section

1014 of the Revised Statutes, for removal to the Middle District of Tennessee for trial. Inasmuch as the indictment charged an offense committed against the United States triable in the Middle District of Tennessee, and inasmuch as the identity of the defendant was admitted, the Government moved for an order of commitment for trial before that court. Thereupon the defendant offered to prove by himself and others that the Circuit Court for the Middle District of Tennessee had no jurisdiction over his person touching the offense charged; that he had been a resident of Virginia for many years and never in Tennessee did he perform nor was he a party to or engaged in any act or thing charged in the indictment, nor had he at any time or place done any of the things charged.

The court held that upon an application for arrest and removal in Virginia, in which State there no longer exists the right of a preliminary examination upon a criminal charge prior to a trial on the merits, it was the duty of the court upon the presentation of a sufficient indictment and proof of identity to cause the removal of the defendant for trial or admit him to bail. The testimony for the defendant was accordingly rejected and he was ordered to give bail to appear before the Circuit Court for the Middle District of Tennessee or in default to be committed to jail. The defendant declined to give bail and sued out a writ of habeas corpus, which writ, after hearing, was

discharged. An appeal was allowed to this court and he was enlarged on bail.

The appellant claims under clause 3, section 2, article 3 of the Constitution and the sixth amendment that he is entitled to be tried and can only be indicted and tried for any alleged offense against the United States in the State and district where the offense was committed; that the alleged offense was not committed in the middle district of Tennessee and that no act alleged was done by the defendant in that district. He further claims that the indictment does not charge any offense against the United States; that his imprisonment is without authority of law and the proceedings for removal illegal and in violation of his constitutional rights; that the exclusion of the evidence offered and the holding that the certified copy of the indictment was conclusive deprived the petitioner of rights secured to him by the Constitution and section 1014 of the Revised Statutes, and that he is deprived of his liberty without due process of law.

Some thirty corporations, of different States, and about twenty-five individual persons, residents and citizens of different States, have been jointly indicted at Nashville. The removal of the non-resident defendants and the trial of the suit have necessarily been deferred awaiting the decision of these cases.

As the appellants are at large on bail and, in order to enable the Government to proceed with the prosecutions, the Solicitor-General respectfully

moves the court to advance the cases on the docket and to set them down for hearing on some day convenient to the court during the present term.

Opposing counsel concur in this motion, only asking that the cases be set far enough off to give ample time for preparation.

HENRY M. HOYT,
Solicitor-General.

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Supreme Court of the United States.

No. 369.—October Term, 1906.

James G. Tinsley, Appellant, *vs.* Morgan Treat, United States Marshal in and for the Eastern District of Virginia et al. } Appeal from the Circuit Court of the United States for the Eastern District of Virginia.

[March 4, 1907.]

Mr. Chief Justice Fuller delivered the opinion of the Court:

In May, 1906, the grand jury in the United States Circuit Court for the Middle District of Tennessee returned an indictment against thirty corporations, two partnerships, and twenty-five persons, as defendants. This indictment contained six counts. Generally speaking, the first, second, fourth and fifth charged the defendants with violating section 1 of the act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies;" and the third and sixth counts charged them under section 5440 of the Revised Statutes. In July, 1906, the Government presented to the District Judge of the Eastern District of Virginia, at Richmond, a complaint made by Morgan Treat, United States Marshal, alleging that he believed James G. Tinsley stood indicted as aforesaid, and annexing a certified copy of the indictment as a part of the complaint, and praying that Tinsley might "be arrested and imprisoned and removed or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee, and further dealt with according to law." Tinsley was arrested and taken directly before the district judge, who acted as committing magistrate as well as the judge to order removal. In the proceedings before the District Judge, Tinsley admitted that he was one of the defendants named in the indictment. The Government relied on the certified copy of the indictment, and offered no evidence except that; and asked for an order to be made for Tinsley's commitment and removal forthwith.

The record of those proceedings states:

"And thereupon the defendant, J. G. Tinsley, offered himself as witness in his own behalf, and being about to be sworn, the United States, by its counsel, thereupon objected to the witness being sworn or to any testimony being given in rebuttal of the indictment in these proceedings, on the ground that the identity of the defendant being admitted, inasmuch as the indictment on its face charges offenses against the United States com-

mitted and triable in the jurisdiction in which the defendant stands indicted, no evidence is admissible here to impeach the indictment, and the order of commitment should be made without other proof.

"The defendant's counsel thereupon offered to prove by the defendant and other witnesses then and there present, that the Circuit Court for the Middle District of Tennessee had no jurisdiction over the person of said defendant touching the offenses charged in said indictment, in that defendant and said other witnesses would, if permitted, testify that defendant is, and has been for many years, a resident and citizen of the city of Richmond, State of Virginia, and that defendant never at any time, or at any place in the State of Tennessee, at the times charged in the indictment, did or performed, or was party to, or engaged in any act or thing in the said indictment charged as having been done and performed in any way whatsoever by this defendant in the said State of Tennessee; nor has defendant done, or performed, or been engaged in, or a party to the same or any of them in any other place or places at any other time or times whatsoever.

"Thereupon counsel for the Government renewed its objections as aforesaid.

"After hearing counsel on both sides, the court announced its conclusions as follows:

'The conclusion reached by the court is that in a proceeding for the arrest and removal of persons charged with a violation of the laws of the United States pursuant to section 1014 of the Revised Statutes of the United States, before a United States District Judge, sitting in the State of Virginia, in which State there no longer exists the right of a preliminary examination upon a crime charged prior to the trial upon the merits, when said judge is called upon to act as well in the matter of the apprehension of such persons, as in their removal to the jurisdiction in which they have been indicted, that upon the government's presentation of a sufficient indictment regularly found by a grand jury in a court of the United States, properly charging the commission of an offense within the district in which such indictment is found, coupled with proof of the identity of the person indicted, it is its duty to properly bail such person for appearance before the court in which he is indicted, or cause him to be removed thereto.'"

It was then ruled that the testimony offered was inadmissible, and the District Judge ordered that the accused either give bail or be held for removal. Tinsley declined to give bond, a warrant directing removal to the Middle District of Tennessee was issued, and he remained in custody pending its execution. No objection was offered to the indictment at any time during the proceedings before the District Judge.

The District Judge should not have allowed himself to be controlled by the statutes of Virginia. In that Commonwealth it appears to have been formerly required that after indictment an examination should be had, but by subsequent legislation it was provided that where an indictment had been found, a capias should be issued for the arrest of the defendant, and no inquiry was to be made. But when there was no indictment a

person arrested for an indictable offense must be taken before a magistrate for preliminary examination, and it was the magistrate's duty to inquire whether or not there was sufficient cause for charging the accused with the offense. Pollard's Annotated Virginia Code, §§ 3955, 3969, 4003; *Jones* v. *Commonwealth*, 86 Va. 661.

But, as hereinafter seen, the District Judge on application to remove acts judicially, and that part of section 1014 of the Revised Statutes of the United States which says that the proceedings are to be conducted "agreeably to the usual mode of process against offenders in such State," has no relation to the inquiry on application for removal.

Application was then made to the Circuit Court for writs of *habeas corpus* and certiorari, which were granted and due returns made. The petition alleged that Tinsley was unlawfully restrained of his liberty by the marshal, under color of authority of the United States by virtue of a warrant for removal claimed to have been issued under section 1014, Revised Statutes. It set forth in full the proceedings taken before the District Judge and the rulings and orders made during the hearing. It was charged that under and by virtue of clause 3, section 2, article 3, of the Constitution, and of the Sixth Amendment he was entitled to be tried, and could only be tried for any alleged offense against the United States in the State and district where the offenses charged in the indictment were committed; that the offenses specified in the indictment were not committed in the Middle District of Tennessee; that none of the acts supposed to have been engaged in by petitioner were done within that district; that the indictment stated no offense and was insufficient and void. It was further alleged that the warrant of removal was in violation of section 2 of article 3 of the Constitution and of the Sixth Amendment; that the rulings of the District Judge, in holding the certified copy of the indictment conclusive and in refusing to permit the introduction of any evidence on behalf of petitioner, deprived him of rights secured by the Constitution and by section 1014, Revised Statutes; and that he was deprived of his liberty without due process of law.

At the hearing before the Circuit Court, in addition to the record of the proceedings before the District Judge, an offer was made to prove by witnesses the facts set forth in the petition, but the court did not admit the same, because it was held that the certified copy of the indictment, with proof of the identity of the party accused, sufficiently established the existence of probable cause.

In other words, the indictment was in effect held to be conclusive. The Circuit Judge said, it is true, that probable cause must be shown in order to obtain a removal, but he held that inasmuch as the copy of the indictment alone was regarded as sufficient evidence of probable cause in *Beavers* v.

Henkel, 194 U. S. 73, it was sufficient in the present case. In that case, however, no evidence was introduced to overcome the *prima facie* case made by the indictment except that evidence was offered as to what passed in the grand jury room and rejected on that ground and not because it went to the merits.

Section 1014 of the Revised Statutes reads as follows:

"For any crime or offense against the United States, the offender may, by any justice or judge of the United States, or by any commissioner of a circuit court to take bail, or by any chancellor, judge of a supreme or superior court, chief or first judge of common pleas, mayor of a city, justice of the peace, or other magistrate, of any State where he may be found, and agreeably to the usual mode of process against offenders in such State, and at the expense of the United States, be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States as by law has cognizance of the offense. Copies of the process shall be returned as speedily as may be into the clerk's office of such court, together with the recognizances of the witnesses for their appearance to testify in the case. And where any offender or witness is committed in any district other than that where the offense is to be tried, it shall be the duty of the judge of the district where such offender or witness is imprisoned, seasonably to issue, and of the marshal to execute, a warrant for his removal to the district where the trial is to be had."

Obviously the first part of this section provides for the arrest of any offender against the United States wherever found and without reference to whether he has been indicted, but when he has been indicted in a district in another State than the district of arrest, then, after the offender has been committed, it becomes the duty of the District Judge, on inquiry, to issue a warrant of removal. And it has been repeatedly held that in such cases the judge exercises something more than a mere ministerial function, involving no judicial discretion. He must look into the indictment to ascertain whether an offense against the United States is charged, find whether there was probable cause, and determine whether the court to which the accused is sought to be removed has jurisdiction of the same. "The liberty of the citizen, and his general right to be tried in a tribunal or forum of his domicile, imposes upon the judge the duty of considering and passing upon those questions." Mr. Justice Jackson, then Circuit Judge, *Greene's Case*, 52 Fed. Rep. 106. In the language of Mr. Justice Brewer, delivering the opinion in *Beavers* v. *Henkel*, 194 U. S. 73:

"It may be conceded that no such removal should be summarily and arbitrarily made. There are risks and burdens attending it which ought not to be needlessly cast upon any individual. These may not be serious in a removal from New York to Brooklyn, but might be if the removal was from San Francisco to New York. And statutory provisions must be interpreted in the light of all that may be done under them. We must

never forget that in all controversies, civil or criminal, between the Government and an individual the latter is entitled to reasonable protection. Such seems to have been the purpose of Congress in enacting section 1014, Rev. Stat., which requires that the order of removal be issued by the judge of the district in which the defendant is arrested. In other words, the removal is made a judicial, rather than a mere ministerial, act."

In *Greene* v. *Henkel*, 183 U. S. 249, Greene was indicted in the District Court of the United States for the Southern District of Georgia. He was arrested and taken before a commissioner in the State of New York. The commissioner held that the certified copy of the indictment was conclusive evidence of probable cause, and refused to hear any evidence on the part of the defendant; and thereupon application was made to the District Judge of the Southern District of New York for an order of removal. That judge held that the commissioner should have heard evidence, and remanded the case. Evidence was then taken before the commissioner, and he decided that there was probable cause. Application was again made to the District Judge for an order of removal, and he held that the evidence showed the existence of probable cause, and made the order accordingly. Greene thereupon presented his petition to the Circuit Court for a writ of *habeas corpus*, which was denied, and the case brought here on appeal. The evidence before the commissioner and before the District Judge was not annexed to the petition nor brought up on certiorari, so that it formed no part of the record in the *habeas corpus* case. We held that, in the absence of the evidence, we must assume that the finding of probable cause was sustained.

But it was insisted that the offense was only that which was contained in the indictment, and if the indictment were insufficient for any reason that then no offense was charged upon which removal could be had. This court, however, ruled that the indictment did not preclude the Government from giving evidence of a certain and definite character concerning the commission of the offense and that the mere fact that there might be lacking in the indictment some averment of time or place or circumstance in order to render it free from technical defects would not prevent the removal if evidence were given on the hearing which supplied such defects and showed probable cause to believe the defendants guilty of the offense defectively stated in the indictment. Mr. Justice Peckham, in delivering the opinion, was careful to say that it was not held that where the indictment charged no offense against the United States or the evidence failed to show any, or, if it appeared that the offense charged was not comitted or triable in the district to which the removal was sought, the judge would be justified in ordering the removal, because there would be no jurisdiction to commit or any to order the removal of the prisoner. "There must be some competent evidence to show that an offense has been committed over

which the court in the other district had jurisdiction, and that the defendant is the individual named in the charge, and that there is probable cause for believing him guilty of the offense charged." On the facts of that case it was not found necessary to express an opinion upon the question whether the finding of an indictment was, in the proceeding under section 1014, conclusive evidence of the existence of probable cause for believing the defendant in the indictment guilty of the charge set forth. Although it may be said that if the indictment were conclusive upon the accused, it would be conclusive upon the Government also.

It was held in *Beavers* v. *Henkel*, 194 U. S. 73; *Benson* v. *Henkel*, 198 U. S. 1; *Hyde* v. *Shine*, 199 U. S. 62, as well as *Greene* v. *Henkel*, *supra*, that an indictment constituted *prima facie* evidence of probable cause, but not that it was conclusive.

We regard that question as specifically presented in the present case and we hold that the indictment cannot be treated as conclusive under section 1014.

This being so, we are of opinion that the evidence offered should have been admitted. It is contended that that evidence was immaterial, and, if admitted, could not have affected the decision of either the District or Circuit Judge. Of course, if the indictment were conclusive, any evidence might be said to be immaterial, but if the indictment were only *prima facie*, then evidence tending to show that no offense triable in the Middle District of Tennessee had been committed by defendant in that district could not be regarded as immaterial.

The Constitution provides that "The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed," (Article III, section 2;) and that "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and District wherein the crime shall have been committed," (Amendment VI;) and in order that any one accused shall not be deprived of this constitutional right, the judge applied to to remove him from his domicile to a district in another State must find that there is probable cause for believing him to have committed the alleged offense and in such other district. And in doing this his decision does not determine the question of guilt any more than his view that the indictment is enough for the purpose of removal definitively determines its validity.

Appellant was entitled to the judgment of the District Judge as to the existence of probable cause on the evidence that might have been adduced, and even if the District Judge had thereupon determined that probable cause existed, and such determination could not be revised on *habeas corpus*, it is nevertheless true that we have no such decision here, and the order of

removal cannot be sustained in its absence. Nor can the exclusion of the evidence offered be treated as mere error, inasmuch as the ruling involved the denial of a right secured by statute under the Constitution.

This conclusion is fatal to the order and warrant of removal and requires a reversal of the judgment below and the discharge of appellant.

Final order reversed and cause remanded with directions to discharge appellant from custody under the order and warrant of removal without prejudice to a renewal of the application to remove.

Mr. Justice HARLAN dissented.

Mr. Justice MOODY took no part in the disposition of the case.

Nos. 370, 371, 372, 373, 374, 375, 376, 377, 378 and 379.

370	William De C. Kessler *vs.* Morgan Treat, United States Marshal, et al.	Appeals from the Circuit Court of the United States for the Eastern District of Virginia.
371	Samuel T. Morgan *vs.* Morgan Treat, &c.	
372	Austin B. Carpenter *vs.* Morgan Treat, &c.	
373	Fortesque Whittle *vs.* Morgan Treat, &c.	
374	Frank E. Wilcox *vs.* Morgan Treat, &c.	
375	George Braden *vs.* Morgan Treat, &c.	
376	Frank S. Royster *vs.* Morgan Treat, &c.	
377	J. Rice Smith *vs.* Morgan Treat, &c.	

378	Charles F. Burroughs *vs.* Morgan Treat, &c.	Appeals from the Circuit Court of the United States for the Eastern District of Virginia.
379	Charles H. McDowell *vs.* Morgan Treat, &c.	

MR. CHIEF JUSTICE FULLER: The same decrees will be entered in each of these cases as in the foregoing.

Mr. Justice HARLAN dissented.
Mr. Justice MOODY took no part.

True copy.

Test:

Clerk Supreme Court, U. S.